Supreme Court, U.S.
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No. 06-316

IN THE SUPREME COURT
OF THE UNITED STATES

SHERRY WOODARD,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

I. Whether this Court should grant certiorari to resolve the circuit split created by the Eighth Circuit's rejection of this Court's *Falcone* decision to hold that sale of a lawful item by an established retailer is sufficient to prove the vendor's knowing and voluntary joinder in a conspiratorial agreement among the purchaser and others to manufacture and distribute an illegal product using the item as an ingredient, where the contrary position has been adopted by eight other circuits.

II. Whether this Court should grant certiorari to correct the Eighth Circuit's denial of an accused's Sixth Amendment right to a jury trial on the facts relevant to the application of 18 U.S.C. § 3553(f) which was recognized by this Court's "substantive" decision in *United States v. Booker*, 543 U.S. 220 (2005), and was unaffected by the "remedial" decision in *Booker*.

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B. The Eighth Circuit's decision conflicts with the decisions of eight other circuits which hold that mere sales (even of the ultimate illegal product) are not sufficient to prove the vendor's knowing and voluntary joinder in a conspiratorial agreement among the purchaser and others with respect to the product. 17

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OPINIONS BELOW

The order denying Woodard's Petition for rehearing with suggestion for rehearing *en banc*, entered June 2, 2006, Pet. App. 4a, is not reported.

The opinion of the Eighth Circuit Court of Appeals, entered on March 29, 2006, authored by the Honorable Lavenski Smith, Pet. App. 4a-14a, is reported at 443 F.3d 661.

The judgment and statement of reasons, filed January 25, 2006, Pet. App. 14a-15a, are not reported.

JURISDICTION

The opinion and order of the United States Court of Appeals for the Eighth Circuit were filed on March 29, 2006. A Petition for Rehearing with Suggestion for Rehearing En Banc was denied by order entered on June 2, 2006. This Petition for Writ of Certiorari is filed within the time allowed by this Court under Supreme Court Rules, Rule 13. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1) and Supreme Court Rules, Rule 20.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States of America provides, in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law . . . . .

18 U.S.C. § 3553(f) provides:

> (f) Limitation on applicability of statutory minimums in certain cases.-- Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act [21 U.S.C. §§ 841, 844, 846] or section 1010 or 1013 of the Controlled Substances Import and Export Act [21 U.S.C. §§ 960, 963], the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section

994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

U.S.S.G. 5C1.2(a) provides:

(a) Except as provided in subsection (b), in the case of an offense under 21 U.S.C. § 841, § 844, § 846, § 960, or § 963, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the defendant meets the criteria in 18 U.S.C. § 3553(f)(1)-(5) set forth below:

(1) The defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines before application of subsection (b) of 4A1.3 (Departures Based on Inadequacy of Criminal History Category);

(2) The defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) The offense did not result in death or serious bodily injury to any person;

(4) The defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848; and

(5) Not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

STATEMENT OF THE CASE

Sherry Woodard is a forty-four-year-old mother of two children who has never been convicted of any criminal activity whatsoever, and has an upstanding reputation in the community. Pet. App. 188a (Tr. 633, 642). Woodard is related by blood to two of the defendants who were subject to the original indictment. She is the half-sister of the "hub" of the conspiracy, Lonnie Weston. Pet. App. 189a (Tr. 644). By virtue of her relation to Lonnie Weston, she is also the aunt of Jody Weston, Lonnie Weston's son. Pet. App. 206a (Tr. 685). Woodard and her husband grew up in the area, Pet. App. 206-07a (Tr. 692), and Woodard lived in relatively close proximity to these relatives in McDonald County, Missouri. Pet. App. 189-91a (Tr. 644-45, 648).

The evidence at trial focused largely upon the methamphetamine use, distribution, and manufacturing activities of Lonnie Weston and Rick (or Billy) Brassfield, and the evidence on this score was overwhelming. There was testimony of methamphetamine manufacturing and distribution by Weston as early as 1997-98. Pet. App. 110-11a, 120a (Tr. 288, 329). This activity by Weston and by Brassfield continued during 1999, Pet. App. 112-14a (Tr. 291-92, 296), and 2000. Pet. App. 116-19a (Tr. 303-07). Similar methamphetamine-related activities of Weston and Brassfield from 2000 to 2003 were the main subject of proof at trial, which consisted largely of evidence seized during a series of searches and testimony from cooperating witnesses.

On March 23, 2000, law enforcement officials executed a search warrant on a home believed occupied by Lonnie Weston and discovered much evidence of methamphetamine manufacturing and use ("snorting," smoking, and intravenous), which was described in detail by Officer Jeff Sutherland, who participated in the search. Pet.

App. 16-30a (Tr. 17-41). This was the first of a series of such searches.

There was also evidence of a series of three searches of the Brassfield property on and around October 16, 2000, and a report made by Frances Duckett after she was stopped by Sutherland while driving Brassfield's vehicle three days before these searches began. Pet. App. 30a (Tr. 41-42). Among other things, Duckett told officials to search the woods across from the Sims Store, which was owned by Brassfield at the time. Pet. App. 30a (Tr. 42). A search was conducted which revealed evidence of methamphetamine manufacture in a burn pile. Pet. App. 30-32a (Tr. 42-43, 48). The items found in this search were linked to those found in the March 23, 2000 search of Weston's residence. Pet. App. 31-32a, 40a (Tr. 43-44, 61).

Following the search of the burn pile, the police searched the Brassfield residence, uncovering substantial evidence of the manufacture and use of methamphetamine. Pet. App. 32-52a, 87a (Tr. 49-78, 159). A search warrant was obtained for a nearby chicken house which was searched the next day. Pet. App. 51-52a (Tr. 78). As a result of these searches, the police seized 1700 grams of methamphetamine solutions in various stages of manufacture. Pet. App. 88a (Tr. 175).

There was also evidence regarding the numerous sources for the various ingredients in the methamphetamine manufacturing process. Evidence seized in the March 2000 search tended to prove that Duckett helped obtain pseudoephedrine pills for use in the manufacturing process. Pet. App. 40-42a, 50-51a (Tr. 62-63, 77). In addition, Michelle Kreitel purchased and stole cold pills and lithium batteries in Rogers, Arkansas, for use in the manufacturing process. Pet. App. 115a (Tr. 299). Kreitel also obtained red phosphorous for use in manufacturing. Pet. App. 115-16a (Tr. 300). Lance Hackett bought or stole pseudoephedrine

pills from different stores for the same purpose. Pet. App. 121a (Tr. 362). Kevin Davis purchased pills and batteries from "various places" on several occasions after 2000 for this purpose. Pet. App. 125-28a (Tr. 401-02, 406). In addition, before Brassfield sold the Sims Store, he ordered pseudoephedrine pills through the Sims Store for use in methamphetamine manufacture. Pet. App. 121-22a (Tr. 366). After she was released from prison in 2003, Kreitel continued to obtain pseudoephedrine pills for use in making methamphetamine, primarily by stealing them from several different stores. Pet. App. 119-20a (Tr. 311-12). Weston contributed by purchasing chemicals and supplies such as plastic hoses, muriatic acid, and Coleman fuel from a hardware store operated by Ray Easley in Pea Ridge, Arkansas, on numerous occasions between 2000 and 2002. Pet. App. 124-25a (Tr. 392-93). Craig Guinn, another cooperating witness, helped obtain anhydrous ammonia. Pet. App. 129-30a (Tr. 426-27).

While this activity was going on, Sherry Woodard lived a few miles down a county road ("KK"). Pet. App. 189a (Tr. 643). In 1999 and 2000, the police had no reason to suspect Woodard of involvement in any of these illegal activities which were occurring in the area. Pet. App. 95a (Tr. 201). Woodard first began working with Officer Sutherland in 1998 or 1999, after he approached her regarding Mr. Weston's suspected illegal activities. Pet. App. 191-92a (Tr. 650-51). Woodard continued to cooperate, and had a good relationship with Officer Sutherland during 2000, Pet. App. 192a, 198-99a (Tr. 651, 668-69), and would call Officer Sutherland and ask him to check on places that she suspected might harbor methamphetamine activity. Pet. App. 91-92a (Tr. 193, 195). Woodard and Officer Sutherland maintained this good working relationship through December 2001, Pet. App. 92-93a, 95-97a (Tr. 196, 201-03), and Officer Sutherland had standing permission from Woodard to come onto any of her property at any time. Pet. App. 93-94a, 192-

93a (Tr. 197-98, 651-52). On more than one occasion during 2001, Woodard asked police officers to keep an eye on her property. Pet. App. 54-55a, 59a (Tr. 88, 104).

Woodard purchased the Sims Store from Rick Brassfield on October 31, 2000. Pet. App. 52-53a, 122-23a, 126-27a, 193a (Tr. 83, 85, 372-73, 404, 652-53). At the time the Sims Store was sold, it had been closed for several months and contained no merchandise. Pet. App. 94a, 123-24a, 193-94a (Tr. 199, 383, 653). The sale was an arm's length transaction handled through a real estate agent. Pet. App. 207a (Tr. 693). At roughly the same time that Woodard purchased the store, she moved to a house next door to the store. Pet. App. 190a (Tr. 645).

On January 13, 2001, Rick Brassfield was arrested on an outstanding narcotics warrant at a Super 8 Motel in Pittsburg, Kansas. Pet. App. 157-71a (Tr. 517-40). At the time of his arrest, he was accompanied in the motel room by Duckett. A search incident to the arrest discovered physical evidence of the use, distribution and manufacture of methamphetamine. Pet. App. 171-75a (Tr. 541-47).

Woodard began to operate the Sims Store in March 2001. Pet. App. 189a (Tr. 643). In June 2001, Woodard first met Charles Lafoon. Pet. App. 197-98a (Tr. 665). Mr. Lafoon was a sales person for Handi-Rak, which was a stocking company that provided inventory for sale in stores such as the Sims Store. Pet. App. 140a, 196-97a (Tr. 455, 663). Woodard's first transaction with Handi-Rak was on June 27, 2001. Pet. App. 140-41a (Tr. 458). She did not purchase any pseudoephedrine tablets from Handi-Rak until August 2001. Pet. App. 141-42a (Tr. 460-61). From August 2001 until approximately January 2002, Woodard bought pseudoephedrine tablets from Handi-Rak on several occasions. Pet. App. 140-57a (Tr. 460-66, 475-92). Woodard did not "always" buy pseudoephedrine, Pet. App. 147-48a (Tr. 478), and her purchases were virtually always half (or

less) than the actual legal limit, which was ninety-six boxes (while Woodard generally ordered forty-eight boxes). Pet. App. 147-48a, 154a (Tr. 478, 488), *see also* Pet. App. 140-57a (Tr. 460-66, 475-92) (describing purchases). According to invoices introduced at trial, over this period, the Sims Store received several cases of cold pills containing several thousand individual tablets. Pet. App. 186-87a (Tr. 607-08).

Craig Guinn testified that on three occasions over a two to three month period, he was present when Lonnie Weston and/or Becky Singleton picked up a case of pseudoephedrine tablets from the Sims Store. Pet. App. 130-37a (Tr. 429-34, 445-47). Methamphetamine manufacturing is a profitable business, yielding a profit of roughly 133 times the initial investment. Pet. App. 128a (Tr. 413). In contrast to this phenomenal mark up, Guinn's testimony was that Woodard was paid twice the normal price for the pills. Pet. App. 134-36a, 139a (Tr. 434-35, 440-41, 451-52). Several of the persons with whom Woodard allegedly conspired were on the bad credit list at the Sims Store. Pet. App. 204-06a, 208-09a (Tr. 682-84, 712, 714).

Woodard's operation of the Sims Store was essentially a "mom-and-pop" affair, Pet. App. 194-95a (Tr. 654-55), although Becky Singleton occasionally worked at the Sims Store. Pet. App. 203-04a, 206a (Tr. 679, 685). Becky Singleton was Lonnie Weston's girlfriend, Pet. App. 113-14a, 128-29a (Tr. 293, 424), and was (without any evidence of knowledge by Woodard, Pet. App. 207-08a (Tr. 702)) often involved in methamphetamine manufacture. Pet. App. 115a, 119-20a, 122a (Tr. 299, 311-12, 367).

On August 23, 2001, the police conducted yet another search of the Brassfield property. Duckett and Brassfield were present, and evidence of methamphetamine use was uncovered. Pet. App. 53-54a (Tr. 85-87).

On September 21, 2001, Sutherland was, at Woodard's request, surveilling her property, and he

discovered and chased three people who were acting suspiciously. Jody Weston and Woodard's daughter in law were discovered to be among this group. Pet. App. 54-55a, 1-4-10a (Tr. 88, 265-69, 274-76). Photos of items seized in connection with this arrest, which were indicative of methamphetamine manufacture, were introduced at trial. Pet. App. 55-58a, 88-90a (Tr. 91-96, 176-77).

On January 18, 2002, Woodard's attitude towards Officer Sutherland changed. On January 17, Woodard purchased several items from a local Wal Mart to resell in her store, Pet. App. 202-03a (Tr. 675-76), as she had often done. Pet. App. 201-03a (Tr. 673-76). Among these items were ten gallons of Coleman fuel and six lithium batteries. Officer Sutherland arrived at Woodard's residence at approximately 10:30 pm that night, after the store was already closed. He woke Woodard from her sleep and searched the store, all with Woodard's full cooperation and consent. Pet. App. 59-63a, 199-201a (Tr. 104-09, 670-72). During this search, a small amount of marijuana and methamphetamine belonging to Woodard's son, Jared, were discovered. Pet. App. 59-61a, 98-99a, 104a (Tr. 104-06, 206-07, 256). After Woodard's late night cooperation was rewarded with the arrest of her son, Woodard's enthusiasm for assisting the police cooled. Pet. App. 96-98a, 100-03a (Tr. 203-05, 211-15).

On January 23 (or 25), 2002, law enforcement officers visited the Weston property to serve an arrest warrant on Jody Weston for charges arising from the September 21 chase. Becky Singleton was present. Pet. App. 75-76a, 90a, 99-102a (Tr. 131, 182, 209, 213). While on the premises, the officers observed items indicative of methamphetamine use and manufacture. They obtained a search warrant and returned, seizing evidence of methamphetamine manufacture and use. Pet. App. 63-77a, 82-86a (Tr. 110-33, 141-47). Among the items seized were lithium batteries which appeared to be from Radio Shack. Pet. App. 65a (Tr. 114).

The most dramatic events in this case occurred during October 2003, and had nothing to do with Woodard. On October 12, 2003, Weston led police on a high speed chase in Crawford County, Oklahoma, after he was discovered late at night in an isolated area containing several anhydrous ammonia storage tanks. Pet. App. 176-80a (Tr. 562-68). The chase ended when the vehicle driven by Weston crashed, and an inventory of the vehicle determined that it contained stolen anhydrous ammonia, more than a hundred grams of methamphetamine, and other items indicative of ammonia theft and methamphetamine use. Pet. App. 181-86a (Tr. 577-84, 590). On October 23, 2003, Weston was arrested after a struggle and significant physical resistance. Pet. App. 80-83a, 107-08a (Tr. 139-42, 272-73).

Based solely upon her sales of items from the Sims Store, Woodard was charged with two crimes. Woodard was not charged with a substantive crime, but with knowingly and intentionally joining two conspiracies. First, she was charged with conspiring to distribute pseudoephedrine between October 31, 2000, and March 14, 2002, knowing and having reasonable cause to believe that it would be used to manufacture methamphetamine (Count 5). The second and more serious charge (which carries a ten-year statutory mandatory minimum sentence) charged that Woodard conspired to manufacture and distribute 500 grams or more of methamphetamine between January 1999 and March 14, 2002 (Count 1). After trial, a jury returned verdicts of guilty on both charges. Pet. App. 15a.

At sentencing, Woodard asserted that she could not be denied the benefit of the "safety valve" without a jury finding to this effect. Pet. App. 214-18a. The district court made factual findings, denied Woodard the "safety valve" and sentenced Woodard to the ten-year statutory minimum, noting that it would have sentenced her to a lesser term had it not been for the statutory minimum. Pet. App. 14a.

REASONS FOR GRANTING THE PETITION

I. The Eighth Circuit's holding that sale of a lawful item by an established retailer is sufficient to prove the vendor's knowing and voluntary joinder in a conspiratorial agreement among the purchaser and others to manufacture and distribute an illegal product using the item as an ingredient is contrary to decisions of this Court and those of eight other circuits.

Conspiracy to commit a substantive offense has long been recognized to differ from a substantive offense. A conspiracy is an agreement between two or more persons to accomplish an unlawful plan, and this "agreement is the essential evil at which the crime of conspiracy is directed." *Iannelli v. United States*, 420 U.S. 770, 777 n.10 (1975). The dangers created by the potential for overuse or overbreadth of conspiracy charges have long been recognized. *See, e.g., Krulewitch v. United States,* 336 U.S. 440, 445 (1949) (Jackson, J., concurring); *United States v. Broce*, 488 U.S. 563, 583 (1989) (Blackmun, J., dissenting). Thus, in order to prevent the criminalization of innocuous conduct, a specific intent to join the conspiracy has been required in order to support a conspiracy conviction. *United States v. Bailey*, 444 U.S. 394, 403-04 (1980). As the number and scope of conspiracy charges increases, the costs of this expansion are frequently omitted from the calculus, although these costs are both real and substantial. *Cf.* Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U.L. REV. 703 (2005); *Overextending the Criminal Law*, CATO POLICY REPORT, vol. 25, no. 6 (Nov./Dec. 2003).

By affirming the conviction of an owner/operator of a convenience store on the charge of conspiring to manufacture and distribute methamphetamine merely because she sold

over-the-counter medicine from her store, the Eighth Circuit's decision dramatically highlights these problems by creating conflicts with the law declared by this Court and the Seventh Circuit which have that a legitimate vendor who sells a lawful item (even at a premium price) which is used by a third party as an ingredient for an illegal product does not, by making the sale, voluntarily join in any conspiratorial agreement with the purchaser. This conflict is particularly troubling because it is part of a larger conflict between the Eighth Circuit and eight other circuits which hold that mere sales (even if of an illegal product) are not sufficient to prove the vendor's voluntary joinder in a conspiratorial agreement with respect to the illegal product. In short, as a result of the Eighth Circuit's decision, any store owner may face criminal liability and draconian statutory minimum sentences for doing nothing more than operating their business in a lawful manner, based entirely upon the actions and intent of the store's customers.

A. The Eighth Circuit decision conflicts with *United States v. Falcone*, 311 U.S. 205 (1940), and the Seventh Circuit, which hold that sale of a lawful item by an established retailer is not sufficient to prove the vendor's knowing and voluntary joinder in a conspiratorial agreement among the purchaser and others to manufacture and distribute an illegal product using the item as an ingredient, even where the sale is made at a premium price and/or with knowledge of the purchaser's intended use.

The decision of the Eighth Circuit creates a conflict with the decisions of this Court and eight sister circuits which have held that mere sales (even if sales of an illegal substance made with knowledge of the purchaser's intent to resell, or

even if for an inflated price) are not sufficient to sustain a conviction for conspiracy. This decision by the Eighth Circuit, which conflicts with this law dramatically undercuts the long-established requirement of intentional joinder for a conspiracy conviction and throws open the Pandora's box of potentially draconian criminal liability for business owners who have no interest in any criminal activities by their customers, but merely seek their own profit by virtue of the operation of the Adam Smith's "invisible hand" of supply and demand.

The Eighth Circuit's decision squarely conflicts with the decisions of this Court and those of other circuits. Until the Eighth Circuit's decision in this case, the law has been clear that sales of a product by a vendor, such as Woodard, even if made with knowledge that the purchaser intended to use the product to manufacture or distribute an illegal substance, are insufficient to prove that the vendor knowingly and voluntarily joined in some overarching and broader conspiracy to manufacture and distribute the illegal substance. Woodard's sales of pseudoephedrine are no different than the sales of sugar, yeast, and cans that were made to bootleggers by the various accused parties in *United States v. Falcone*, 311 U.S. 205 (1940).

In *Falcone*, the various accuseds sold necessary ingredients to bootleggers with knowledge of the illegal purpose for which the ingredients were to be used by the purchasers, and this Court held the sellers' knowledge was insufficient to prove the sellers' voluntary joinder in the purchasers' conspiracy. In *Falcone*, Salvatore and Joseph Falcone, two sellers of sugar, associated with some of the purchaser-conspirators, and their sales of sugar were "materially larger during the periods of activity of the illicit stills." 311 U.S. at 208 n.1. Henry Alberico, also an accused in *Falcone*, was the subject of even more compelling proof, since his products were linked directly to the illicit stills, and he also paid higher than normal prices for the sugar that he

resold (apparently also at a higher price). 311 U.S. at 208 n.1. Although not expressly stated in *Falcone*, footnote 1 indicates that all these sales occurred on an ongoing basis over a period of time.

Based upon this evidence in *Falcone*, this Court assumed that these three defendants (and two other defendants named Nole) had knowledge of the illegal distilling activity engaged in by the purchasers of their products. 311 U.S. at 208. This Court made clear that the sellers' knowledge of their purchasers' illegal activity did not support an inference of the sellers' knowledge of any conspiracy among the purchasers (as opposed to the commitment of one or more substantive offenses), let alone intentional joinder of such a conspiracy. 311 U.S. at 210.

The *Falcone* principle is unquestionably good law. Amicus Curiae Brief of Specialists in Conspiracy filed in *Hamdan v. Rumsfeld*, No. 05-184, 2006 WL 53979, at *27. Until this aberrant decision by the Eighth Circuit, the circuit courts have consistently followed *Falcone's* direction that more than mere knowledge is required for a conspiracy conviction where a vendor sells products to a purchaser who then uses them in an illicit activity.

The Seventh Circuit cogently explained the rationale for this common-sense result in *United States v. Blankenship*, 970 F.2d 283 (7th Cir. 1992), in which a defendant (Lawrence) was convicted of conspiracy to manufacture methamphetamine based upon his agreement to rent a trailer for use as a methamphetamine lab for one week at the "premium" price of $1000.00, and his acts to prepare the trailer for use as a methamphetamine lab. In unanimously reversing Lawrence's conspiracy conviction, a panel consisting, in part, of Judges Easterbrook and Posner, explained:

> If providing assistance to a criminal organization were the same thing as conspiracy, then Lawrence

> would be guilty. Yet there is a difference between supplying goods to a syndicate and joining it, just as there is a difference between selling goods and being an employee of the buyer. Cargill sells malt and barley to Anheuser Busch, knowing that they will be made into beer, without being part of Busch; by parallel reasoning, someone who sells sugar to a bootlegger knowing the use that will be made of that staple is not thereby a conspirator, *United States v. Falcone*, 311 U.S. 205 (1940), and someone who buys one load of marijuana has not conspired with the sellers, *United States v. Baker*, 905 F.2d 1100, 1106-07 (7th Cir. 1990).
>
> *Falcone* illustrates the doctrine that "mere" sellers and buyers are not automatically conspirators. If it were otherwise, companies that sold cellular phones to teenage punks who have no use for them other than to set up drug deals would be in trouble, and many legitimate businesses would be required to monitor their customers' activities.

970 F.2d at 285-86; *see also* Amicus Curiae Brief of Specialists in Conspiracy filed in *Hamdan v. Rumsfeld*, No. 05-184, 2006 WL 53979, at *27.

The Seventh Circuit then turned its attention to the evidence of the premium price charged by the landlord in that case, which was similar to the evidence against Alberico in *Falcone,* noting that "[t]railers do not rent for $1,000 per week – not in legitimate markets, anyway." 970 F.2d at 286. Addressing the price, the Seventh Circuit noted that although "by charging a premium price, Lawrence seemingly threw in his lot with the [conspirators] . . . . [T]he price cannot be the end of things" and concluded that the premium price proved nothing more than a premium for the risk of injury to the property and the hazard of potential criminal liability as a cost of doing business, and this did not amount to a knowing

and voluntary joinder of the conspiracy. 970 F.2d at 286. Thus, the Seventh Circuit has, following this Court in *Falcone*, squarely held that evidence of a vendor's knowledge of the intended illegal use of the product provided and charging of a premium price fails to prove a desire for a "piece of the action" and therefore fails to prove voluntary joinder in a conspiracy to manufacture and distribute the resulting illegal product.

Woodard's situation is indistinguishable from those addressed in *Falcone* and *Blankenship*, and the Eighth Circuit's decision squarely presents a circuit split on this issue. This acute conflict is particularly troubling because it is part of a significantly larger conflict among the circuits as to whether mere sales (regardless of the legality of the sold product) are sufficient to support a conviction for conspiracy to distribute.

B. The Eighth Circuit's decision conflicts with the decisions of eight other circuits which hold that mere sales (even of the ultimate illegal product) are not sufficient to prove the vendor's knowing and voluntary joinder in a conspiratorial agreement among the purchaser and others with respect to the product.

The Eighth Circuit decision flatly conflicts with these decisions of eight other circuits which have held that mere sales (even if of an illegal product) are not sufficient to support a conviction of conspiracy to distribute that illegal product. The Seventh and Ninth Circuits have carefully explained the distinction between sales and conspiracy that has been obliterated by the Eighth Circuit.

In *United States v. Lennick*, 18 F.3d 814 (9th Cir.), *cert. denied,* 513 U.S. 856 (1994), the defendant possessed marijuana which he sold or gave to several friends and

acquaintances on multiple occasions. This proof was insufficient to prove the agreement that is the essential element of the conspiracy to distribute. *Lennick*, 18 F.3d at 818. The Ninth Circuit noted that such sales merely proved the substantive crime of distribution, not an inchoate conspiracy to distribute, because conspiracy requires proof of an agreement to commit a crime other than the crime that consists of the sale itself. *Lennick*, 18 F.3d at 819 (quoting *United States v. Lechuga*, 994 F.2d 346 (7th Cir.) (*en banc*), *cert. denied*, 510 U.S. 982 (7th Cir. 1993)). The Ninth Circuit explained in *Lennick* that, "were the rule otherwise, every narcotics sale would constitute a conspiracy." 18 F.3d at 819.

The Seventh Circuit, in *Blankenship,* also recognized this distinction between mere distribution and conspiracy, noting that to treat acts of distribution "as a second, inchoate offense . . . [of] conspiring with the buyer is to multiply the criminal punishment and so distort the penalty system the legislature adopted – for what is the point of setting at five years the maximum penalty for selling a given quantity of methamphetamine if every sale violates a second law and doubles the penalty?" 970 F.2d at 287. This is a long-held position within the Seventh Circuit. *United States v. Lechuga*, 994 F.2d 346 (7th Cir.) (*en banc*), *cert. denied*, 510 U.S. 982 (7th Cir. 1993)); *see also United States v. Mims,* 92 F.3d 461, 465 (7th Cir. 1996).

This view, that mere sales do not a conspiracy make, is the prevailing view of the Courts of Appeals, *see United States v. Gore,* 154 F.3d 34, 40 n.1 (2nd Cir. 1998), and is shared by (in addition to the previously mentioned Second, Seventh and Ninth Circuits), the Fifth, Sixth, Tenth, Eleventh and D.C. Circuits. *United States v. Cook*, 461 F.2d 906, 910 n.3 (5th Cir.), *cert. denied,* 409 U.S. 949 (1972); *United States v. Meyers,* 646 F.2d 1142, 1145 (6th Cir. 1981); *United States v. Fox,* 902 F.2d 1508, 1515(10th Cir.), *cert. denied*, 498 U.S. 874 (1990); *United States v. McIntyre,* 836 F.2d 467, 471 (10th Cir. 1987); *United States v. Burroughs,* 830

F.2d 1574, 1580-81 (11th Cir. 1987), *cert. denied,* 485 U.S. 969 (1988); *United States v. Morris,* 836 F.2d 1371, 1373-74 (D.C. Cir. 1988).

The Eighth Circuit has simply repudiated the prevailing view of its sister circuits. In *United States v. Miller*, 91 F.3d 1160 (8th Cir. 1996), the Eighth Circuit held that "evidence of multiple sales of resale quantities of drugs is sufficient in and of itself to make a submissible case of conspiracy to distribute" and noted that "a number of circuits disagree with this view." 91 F.3d at 1162 & n.1. The Eighth Circuit's decision in this case carries this circuit split even further, and has the perverse effect of causing the sales of a legal ingredient by an established retailer to be alone sufficient to support a conspiracy conviction to distribute an ultimately illegal product; even though the vast majority of sister circuits hold the contrary view that sales of the illegal product itself are insufficient to support the very same conspiracy conviction. In this case, the items sold by Woodard were not illegal drugs, but legitimate and legal items of interstate commerce from her established retail institution. This is plainly improper under *Falcone* and creates a clear split with the Seventh Circuit. The irony of this circuit split is heightened by the fact that in eight other circuits, Woodard could not have been convicted of conspiracy to distribute methamphetamine even if she had sold methamphetamine itself (rather than merely a legal ingredient used in its manufacture). This Court should grant certiorari to resolve this split among the circuits.

II. The Eighth Circuit misapplied *United States v. Booker*, 543 U.S. 220 (2005), when it denied the Sixth Amendment right to a jury trial on facts relevant to the application of 18 U.S.C. § 3553(f) which was recognized by this Court's "substantive" decision and unaffected by the "remedial" decision in *Booker*.

This case arises from the intersection of the "substantive" and "remedial" decisions in this Court's recent decision in *United States v. Booker*, 543 U.S. 220 (2005). The underlying Sixth Amendment jurisprudence crystallized no later than 2000, when this Court, in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), held that a sentence enhancing fact (other than a prior conviction) "must be submitted to the jury, and proved beyond a reasonable doubt." 530 U.S. at 490. *Booker*, in its discussion of *Apprendi*, reaffirmed *Apprendi's* holding that "the fact that New Jersey labeled the hate crime a 'sentence enhancement' rather than a separate criminal act was irrelevant for constitutional purposes." *Booker*, 543 U.S. at 231 (quoting *Apprendi*, 530 U.S. at 478). This principle that "the characterization of critical facts is constitutionally irrelevant" was reaffirmed in *Ring v. Arizona*, 536 U.S. 584 (2002), as this Court again explained in *Booker*. 543 U.S. at 231.

In *Blakely v. Washington*, 542 U.S. 296 (2004), this Court held that application of Washington's state criminal sentencing scheme (which was similar to the federal sentencing guidelines) violated the defendant's Sixth Amendment right to have the jury find the existence of any particular fact that the law makes essential to her punishment. 542 U.S. at 301.

On January 12, 2005, this Court issued a pair of decisions by two different majorities, the combined effects of which were to: (1) recognize the Sixth Amendment limitation upon federal sentencing procedure under the federal Sentencing Guidelines, and (2) excise two portions of the Sentencing

Reform Act to make the Sentencing Guidelines advisory, rather than mandatory, in most cases. *United States v. Booker*, 543 U.S. 220 (2005). In *Booker*, certiorari was granted on two questions:

1. Whether the Sixth Amendment is violated by the imposition of an enhanced sentence under the United States Sentencing Guidelines based upon the sentencing judge's determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant.
2. If the answer to the first question is "yes," the following question is presented: whether, in a case in which the Guidelines would require the court to find a sentence-enhancing fact, the Sentencing Guidelines as a whole would be inapplicable, as a matter of severability analysis, such that the sentencing court must exercise its discretion to sentence the defendant within the maximum and minimum set by statute for the offense of conviction.

543 U.S. at 229 n.1. Each *Booker* decision answered one of these two questions, which have been subsequently characterized as the "substantive" and "remedial" issues. *See United States v. Crosby*, 397 F.3d 103, 108-110 (2nd Cir. 2005).

The first decision, authored by Justice Stevens, and joined by Justices Scalia, Souter, Thomas, and Ginsberg, answered the first ("substantive") question as follows, "Any fact (other than a prior conviction) which is necessary to support a conviction exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt." *Booker*, 543 U.S. at 244.

The second decision addressed the remedial issue created by the answer to the "substantive" question, and was authored by Justice Breyer (joined by Rehnquist, O'Connor, Kennedy, and Ginsburg). In this second decision regarding the

appropriate remedy, this Court, through Justice Breyer, resolved the Sixth Amendment issue posed in *Booker* (and made explicit by Justice Stevens' "substantive" decision) by invalidating two specific provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3553(b)(1) and 3742(e). *Booker*, 543 U.S. at 259, 265. Justice Breyer's remedial decision makes clear that with these two exceptions, the "remainder of the [Sentencing Reform] Act" is not affected. *Booker*, 543 U.S. at 259.

As virtually every circuit court encountering the issue has recognized, the ultimate result of Justice Breyer's remedial decision is to leave the "safety valve" in section 3553(f) unaffected. *See, e.g., United States v. Crosby*, 397 F.3d 103, 110 & n.8 (2nd Cir. 2005) ("a critically important aspect of *Booker/Fanfan* is the preservation of the entirety of the SRA with the exception only of two severed provisions. We note that *Booker/Fanfan* did not explicitly excise . . . section 3553(f), concerning "safety valve" relief, . . . which state[s] that courts "shall impose" sentences in accordance with the Guidelines in certain circumstances."); *United States v. Serrano-Beauvaix*, 400 F.3d 50, 56 (1st Cir. 2005) ("The effect of *Booker*, if any, on the safety valve has not been determined." (citing *United States v. Antonakopoloulos*, 399 F.3d 68, 76 & n.6 (1st Cir. 2005)), *cert denied*, --- U.S. ---, 126 U.S. 106 (2006))); *United States v. McKoy,* 452 F.3d 234, 239 (3rd Cir. 2006). The surge of cases addressing the effect of *Booker* on the various "safety valve" provisions in the Guidelines and statute is testimony to the continued uncertainty in this area in the aftermath of *Booker*.

Both before and after *Booker*, 18 U.S.C. § 3553(f) requires that "notwithstanding any other provision of law, in a case of an offense [such as the instant offense] . . . . the court shall impose a sentence pursuant to the guidelines promulgated by the United States Sentencing Commission . . . without regard to any statutory minimum sentence, if the court finds at sentencing" that five facts have been proven. U.S.S.G. 5C1.2(a) establishes an identical requirement in substantially

similar language. Thus, in the limited context of the safety valve, even after *Booker*, the Guidelines remain mandatory, and the Sixth Amendment requirement recognized in Justice Stevens' "substantive" decision in *Booker* therefore applies to any factual determinations that materially affect the sentence.

The combined effect of the two *Booker* decisions upon the "safety valve" is relatively simple. Because Justice Breyer's remedial decision invalidates only two provisions of the Sentencing Reform Act (§§ 3553(b)(1) and 3742(e)), it leaves section 3553(f) unaffected. Thus, in the limited context of the safety valve, the Guidelines are still mandatory even after *Booker*. As a result, the Sixth Amendment issues addressed in Justice Stevens' substantive decision in *Booker* still exist in the context of the safety valve.

This case is a textbook example of the fallout of the significant Sixth Amendment right confirmed by *Booker* in the limited context of the safety valve. In this case, the jury merely found that the elements of each of the two conspiracy charges had been proved. Pet. App. 15a. The jury was never presented with the question of whether the elements of the "safety valve" had been proved. As a result, these issues were never decided by a jury, and were never subjected to the requirement of proof beyond a reasonable doubt. Because of this, Woodard was never afforded her Sixth Amendment right to a determination of the facts underlying the safety valve by a jury beyond a reasonable doubt.

This is no small matter because under the Guidelines (as applied with Sixth Amendment limitations), Woodard's sentence on both counts is limited to a base offense level of 12 under U.S.S.G. 1B1.3 because the weight of methamphetamine manufactured and distributed after Woodard joined the conspiracy was not proven or found by the jury. Application Note 2 to U.S.S.G. 1B1.3 (scope of conspiracy not same as scope of "jointly undertaken criminal activity" which forms basis for sentence, and "A defendant's relevant conduct does

not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (*e.g.*, in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level."). Even without any adjustments or departures, this results in a sentence of 10-16 months, and falls within Zone C on the Sentencing table. The potential effect for Woodard is enormous.

The district court's denial of the safety valve (whether it was a decision to deny application of the safety valve on the merits, or was an erroneous belief that *Booker* resolved the issue) to sentence Woodard to the statutory minimum sentence was based upon five facts that were never submitted to the jury. These five facts are without question the most important facts in the case, since they effectively make a difference between a sentence of roughly one year and ten years. Without any finding by the jury, Woodard's sentence was effectively enhanced to ten times what the Guidelines prescribed. This denial of the safety valve without any finding by the jury is a violation of Woodard's Sixth Amendment right to trial by jury as recognized in the substantive decision in *Booker,* and should be corrected.

In short, after *Booker*, it is clear that under the Sixth Amendment, unless Woodard is afforded a sentencing hearing before a jury on the issue of the applicability of the safety valve, she cannot be sentenced without the benefit of the safety valve. To deprive her of the benefit of the safety valve in the absence of the required jury findings violates her Sixth Amendment right to a jury trial on "any particular fact that the law makes essential" to her punishment. *Booker*, 543 U.S. at 232. The Eighth Circuit's failure to appreciate this fact and to afford Woodard the benefit of the safety valve (or afford her a sentencing hearing with a jury on this issue) violated

Woodard's Sixth Amendment right to a jury trial as recognized in *Booker*.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

No. _____

SHERRY WOODARD,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITIONER'S APPENDIX

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ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DENYING PETITION FOR REHEARING, FILED JUNE 2, 2006:

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No. 05-1291

United States of America, Appellee
v.
Sherry Woodard, Appellant

Order Denying Petition for Rehearing and for Rehearing En Banc

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 2, 2006
Order Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eight Circuit

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, FILED MARCH 29, 2006:

United States Court of Appeals, Eighth Circuit.
UNITED STATES of America, Appellee,
v.
Lonnie WESTON, Appellant.
United States of America, Appellee,
v.
Sherry Woodard, Appellant.
Nos. 04-3325, 05-1291.

Before SMITH, HEANEY, and BENTON, Circuit Judges.

SMITH, Circuit Judge.

Lonnie Weston and Sherry Woodard appeal their convictions for the manufacture, possession, and distribution of methamphetamine. [Portions relating solely to Weston omitted] Woodard argues that insufficient evidence supported her conviction. In the alternative, Woodard asserts that the district court erred by not applying the statutory safety valve set forth in 18 U.S.C. § 3553(f). We remand Weston for resentencing in consideration of the factors set forth in 18 U.S.C. § 3553(a), and we affirm the remainder of the district court's judgments.

I. *Background*

Law enforcement officers, including Jeff Sutherland, went to Lonnie Weston's residence to investigate reports that stolen vehicles were located there. Weston lived in a mobile home located on a state highway in rural McDonald County, Missouri. Although his property is accessible by the highway, Weston's mobile home cannot be seen from the highway. Weston's property is fenced and a gate blocks the driveway entrance near the highway. The officers admitted that it was possible that the gate was closed, but it is undisputed that the gate was not locked.

Beyond the gate, the driveway winds approximately 200 yards to a split-rail fence located between the end of the driveway and the mobile home. The mobile home is positioned perpendicular to the fence. Thus, one standing at the fence faces an end of the trailer, and the front door and articles near it are not visible from this vantage.

A. *First Search*

The officers entered the driveway, proceeded to and parked at the split-rail fence. The officers observed many junk vehicles, but they saw no vehicles matching descriptions of those reported to be stolen. Nonetheless, the officers exited their vehicle and proceeded beyond the split-rail fence to the front door of the mobile home. The officers intended to announce their presence and ask Weston about the stolen

vehicles.

As the officers approached the front door, they observed propane tanks next to the door and other tanks leaned against the split-rail fence. The officers noticed a blue discoloration on the valves of the tanks, which indicated that they had contained anhydrous ammonia, an ingredient used in the manufacture of methamphetamine. One of the tanks had been spray-painted blue in an apparent attempt to conceal the discoloration. The discovery of the tanks was consistent with Sutherland's knowledge of reports that methamphetamine had been manufactured at Weston's home. The officers testified that if methamphetamine had been recently manufactured there would have been a chemical odor but that they smelled no such odor on this day. The officers left the premises to obtain a state search warrant.

Upon searching the premises pursuant to the warrant, officers encountered several persons at the residence with personal use amounts of methamphetamine. Officers also seized physical evidence consistent with the manufacture and distribution of methamphetamine, including a methamphetamine cookbook and syringes. The evidence seized pursuant to execution of this warrant was admitted against Weston in the proceedings below.

B. *Second Search*

Almost two years later, Officer Sutherland returned to Weston's property to serve a felony warrant on Jody Weston, Lonnie's son, who Sutherland had information might be found at Lonnie's residence. As Sutherland approached the front door, he heard female voices talking inside the residence. Sutherland knocked on the door, announced his presence, and noticed that the conversation inside abruptly halted. He continued to knock, and several minutes later, Desa White, Jody's mother and Lonnie's ex-wife, answered the door. Sutherland asked if Jody was there, and White twice told him no. Sutherland then received consent from

White to enter the premises to search for Jody. It is unclear whether Sutherland asked to go inside or if White offered. Sutherland did not ask White if she lived there or if she had the authority to consent to a search of the premises.

In searching the premises for Jody, Sutherland observed several items related to the manufacture of methamphetamine. Sutherland then left the residence and applied for a search warrant based upon what he had seen. After obtaining the warrant, officers returned to the residence and performed a more thorough search, discovering even more items indicative of the manufacture and distribution of methamphetamine. The items seized pursuant to execution of this warrant were also admitted into evidence against Weston.

C. *Woodard's involvement*

Woodard, Weston's half-sister, lives in a mobile home on the same property as Weston,[1] located near the Sims General Store. Woodard owns and operates the store. Notwithstanding its rural location and lack of gasoline pumps, the Sims General Store sold a large quantity of pseudoephedrine pills. Charles Laffoon, the sales agent for Handi-Rak (the company supplying the store s pseudoephedrine), testified that he believed that someone was using the pseudoephedrine to manufacture methamphetamine due to the large amounts purchased. According to Laffoon, Woodard requested the maximum amount of pseudoephedrine that Laffoon could sell each week. Over approximately five months, Woodard ordered 41,904 60-milligram pseudoephedrine pills from Handi-Rak.

FN1. Woodard's home is across the valley from Weston's. At oral argument, Woodard's counsel informed the court that the two homes were approximately 300 yards apart. Weston owns the property.

Woodard told Laffoon the large quantities of

pseudoephedrine were for her personal weight loss; however, co-defendant Craig Guinn testified that Woodard was actually reselling large amounts of the pseudoephedrine to Weston at a premium price. Specifically, Guinn testified that on three separate occasions, he accompanied others[2] who obtained cases of pseudoephedrine pills from the Sims General Store. On each occasion, more than an entire case of pills was purchased. On the two occasions when Guinn personally entered the store, Woodard directed the purchasers of the pills to the back storage room where the pills were kept. Guinn further testified that Weston paid Woodard twice the normal price for the pills. On each of these three occasions, Guinn was present while Weston used the pseudoephedrine to manufacture methamphetamine.

FN2. On two occasions, Guinn accompanied Weston. On the other occasion, Guinn accompanied Rebecca Singleton, at the bequest of Weston.

Before trial, Weston moved to suppress the evidence seized during the two searches of his home. The district court denied both motions. With respect to the first entry, the court ruled that the officers did not invade Weston's reasonable expectation of privacy by walking to the front door of the residence to advise Weston of their presence and purpose. Once at that lawful vantage, the officers observed in plain view the incriminating bluish discoloration of the propane tanks' valves. As a result, the court concluded that their observations could be used to establish probable cause and did not trigger the exclusionary rule. With respect to the second entry, the district court held that it was reasonable for the officers to believe that White had apparent authority to consent to the search of Weston's home to look for Jody Weston and that the ensuing search did not exceed the scope of her consent. Consequently, the court held that Sutherland's observations could be used to establish probable cause for the subsequent search warrant.

A jury found Weston guilty of conspiracy to

manufacture and distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, as well as possession with intent to distribute the same, in violation of §§ 841(a)(1), (b)(1)(A). The district court sentenced Weston to 360 months' imprisonment on both counts, to run concurrently in September 2004. This was the minimum sentence permitted by the then mandatory United States Sentencing Guidelines due to his status as a career offender. The district court also issued an alternative sentence of 240 months, the statutory minimum, in the event that *Blakely v. Washington*, 542 U.S. 296 (2004), was extended to the Guidelines.

The same jury found Woodard guilty of conspiracy to manufacture and distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, and conspiracy to distribute pseudoephedrine having reasonable cause to believe it would be used to manufacture methamphetamine, in violation of 21 U.S.C. §§ 841(c)(2), and 846. Woodard's offense level of 34, combined with a criminal history category of I, resulted in a Guidelines sentencing range of 151 to 188 months. After deciding that Woodard did not qualify for the statutory safety valve set forth in 18 U.S.C. § 3553(f), the district court considered the factors set forth in 18 U.S.C. § 3553(a) and determined that the statutory minimum, 120 months' imprisonment, was reasonable.

II. *Discussion*

. . . .

D. *Sufficiency as to Woodard*

Woodard contends that there was insufficient evidence to support her convictions for conspiracy to manufacture and distribute methamphetamine and conspiracy to distribute pseudoephedrine. "We review the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the government, resolving conflicts in the

government's favor, and accepting all reasonable inferences that support the verdict." *United States v. Sheikh,* 367 F.3d 756, 761 (8th Cir. 2004).

"To convict a defendant on a conspiracy charge, the jury is required to find that 1) an agreement existed among two or more people to accomplish an illegal purpose, 2) the defendant knew of the conspiracy, and 3) the defendant knowingly joined and participated in the conspiracy." *United States v. Hayes,* 391 F.3d 958, 961 (8th Cir. 2004). A defendant's agreement to enter a conspiracy does not have to be explicit, but can consist of a tacit or implicit understanding. *United States v. Kessler,* 321 F.3d 699, 702 (8th Cir. 2003). Woodard concedes that there was a conspiracy between Weston and others. Thus, the decision turns upon the second and third elements. As discussed below, there was substantial evidence that Woodard knew of and knowingly joined both conspiracies for which she was convicted.

i. *Conspiracy to Distribute Pseudoephedrine*

The testimony of Craig Guinn provides substantial evidence that Woodard knew of and knowingly joined the conspiracy to distribute pseudoephedrine. On three occasions, Guinn accompanied others who obtained cases of pseudoephedrine pills from the Sims General Store owned and operated by Woodard. Weston then used the pills to manufacture methamphetamine. On two of those occasions, Guinn witnessed Woodard tell the pill s purchasers where the pills were kept within the store-in a back room, not on the shelf. Guinn testified that Weston paid Woodard twice the retail price for these pills.

The testimony of Charles Laffoon further shows Woodard's knowing involvement in the conspiracy to distribute pseudoephedrine. Despite the rural location of the Sims General Store, Woodard asked Laffoon to sell her the maximum quantity that he could lawfully sell each week.

Woodard explained the large quantity by claiming that she was using the pseudoephedrine for her personal weight loss, which was false in light of Guinn's testimony that the pills were being sold to Weston by the case. Laffoon believed that someone was using the pseudoephedrine to manufacture methamphetamine.

In light of the testimony of Guinn and Laffoon, a reasonable jury could have concluded that Woodard knew of and knowingly joined a conspiracy to distribute pseudoephedrine for use in the manufacture of methamphetamine. *United States v. Bewig,* 354 F.3d 731, 736 (8th Cir.2003).

ii. *Conspiracy to Manufacture and Distribute Methamphetamine*

Relying on the Supreme Court's decision in *United States v. Falcone,* 311 U.S. 205 (1940), Woodard asserts insufficient evidence supported her conviction for conspiracy to manufacture and distribute methamphetamine. In *Falcone,* the defendants sold sugar, yeast, and cans with knowledge that the materials would be used in illicit distilling operations. *Id.* In affirming the reversal of the defendants' convictions for conspiring to violate the revenue laws, the Court held that knowledge of the purchasers' illegal activity, standing alone, did not support an inference of the sellers' knowledge of any conspiracy among the purchasers. *Id.* at 210. In essence, *Falcone* holds that the supplier of goods used for an illegal purpose must have had knowledge of the conspiracy to illegally use the goods. *Valentine v. United States,* 293 F.2d 708, 712 (8th Cir. 1961).

There was sufficient evidence that Woodard knew of the conspiracy to manufacture and distribute methamphetamine and knowingly joined this conspiracy. On cross-examination, Woodard admitted that she informed Officer Sutherland of her suspicions that Weston was manufacturing methamphetamine. At the same time, despite

her suspicions, Woodard supplied Weston with wholesale quantities of pseudoephedrine at a premium price. The cases of pseudoephedrine were not purchased from the shelves of the Sims General Store but were kept in the back room of the store, awaiting purchase by Weston or his agents. Furthermore, Woodard purchased other methamphetamine precursors, including ten gallons of Coleman fuel and six lithium batteries, from Wal-Mart. Although Woodard contends that she purchased these items for resale in the store, the jury could have reasonably concluded that the purchase of these items indicated a deeper involvement in the conspiracy to manufacture methamphetamine than merely supplying large quantities of pseudoephedrine.

In addition, Weston and Woodard are half-siblings living on the same property in a small rural community. Although their homes were not close together, the jury could have reasonably inferred that the pungent odor, a by-product of the anhydrous ammonia method of manufacturing methamphetamine used by Weston, was noticeable at Woodard's home. Moreover, Woodard purchased the Sims General Store from Rick Brassfield fourteen days after Brassfield's arrest. Prior to his arrest, Brassfield used the Sims General Store to obtain pseudoephedrine to manufacture methamphetamine with Weston.[3]

> FN3. Indeed, Brassfield's methods were very similar to Woodard's: he would order large quantities of pseudoephedrine and never place them on the shelves, electing to keep them in the storage room until used by Weston to manufacture methamphetamine.

Finally, given the highly regulated nature of pseudoephedrine, Woodard's repeated bulk sales to the same individuals rather than to businesses or professionals are inconsistent with innocent sales of common consumer products. On this record, the jury could have reasonably believed that Woodard realized that the pseudoephedrine she sold would be used to manufacture methamphetamine and

agreed with the purchasers and others to manufacture and distribute methamphetamine.

E. *Sentencing as to Woodard*

Woodard argues that the district court's refusal to utilize the "safety valve," set forth in 18 U.S.C. § 3553(f), violates the holding of *United States v. Booker,* 543 U.S. 220 (2005). Specifically, she alleges that the United States Sentencing Guidelines Manual remains mandatory within the context of § 3553(f).

Woodard's argument presents an issue of first impression for this Circuit. However, we need not decide the constitutional question because Woodard does not qualify for the safety valve. Section 3553(f) provides that "[n]otwithstanding any other provision of law, in a case of an offense [under certain portions of the Controlled Substances Act], the court *shall impose* a sentence pursuant to the guidelines promulgated by the United States Sentencing Commission ... without regard to any statutory minimum sentence, if the court finds at sentencing" that five elements are satisfied. (emphasis added). The fifth necessary element, contained in § 3553(f)(5), requires the defendant to truthfully provide to the government all information that she has concerning the offense. Woodard did not satisfy this element. The jury did not believe Woodard's trial testimony. Likewise, at the sentencing hearing, the district court expressed its disbelief of Woodard's trial testimony and ultimately concluded that Woodard had not been truthful with either the court or the government. As a result, we find no error in the district court's refusal to grant Woodard relief under the safety valve provision.

III. *Conclusion*

We remand Weston's case for re-sentencing . . . . Sufficient evidence supported Woodard's involvement in the two conspiracies for which she was convicted. Finally, Woodard failed to satisfy a necessary element of the safety

valve by not being truthful with the government as required by § 3553(f).

JUDGMENT AND STATEMENT OF REASONS OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, FILED JANUARY 25, 2006:

Judgment in a Criminal Case

[Woodard] was found guilty of count 1 and 5 of the indictment on 6/17/04. Accordingly, the court has adjudicated that [Woodard] is guilty of the following offenses:

Count 1: Conspiracy to Manufacture and Distribute Methamphetamine; 21 U.S.C. 841(a)(1), (b)(1)(A)(viii), and 846 (Class A Felony), NLT 10 years to life imprisonment/NMT $4million fine/NLT 5 years TSR/$100 MSA; Date Offense Concluded: 03/14/02

Count 5: Conspiracy to Distribute Pseudoephedrine; 21 U.S.C. 841(c)(2) and 846 (Class C Felony), NMT 20 years/NMT $250,000 fine/NMT 3 years TSR/$100 MSA; Date Offense Concluded: 03/14/02

[Woodard] is sentenced [as follows]. This sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant is hereby sentenced to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months on each of counts 1 and 5 to run concurrently.

s/Ortrie D. Smith
United States District Judge
January 25, 2005
[presentation/sequence of information edited for abstracting]

Statement of Reasons

In light of the recent Supreme Court decisions in Booker and Fanfan, the court believes that the USSG range is advisory.

However, the court also concludes that the range under the Guidelines will normally be presumptively reasonable. Here the Court finds a more reasonable sentence, considering the factors in 18 USC 3553, to be 120 months. In fact, if the court could sentence below the statutory minimum sentence, it would do so.

JURY VERDICTS:

Verdict Form B

We, the jury, find the defendant Sherry Woodard guilty of the crime of conspiracy to manufacture or distribute a mixture or substance containing a detectible amount of methamphetamine as charged in Count One of the Indictment, under Instruction No. 35.

If your verdict for Count One is guilty, please indicate the quantity of the methamphetamine that was involved in the conspiracy offense:

[checked] 500 grams or more of a mixture or substance containing detectable amount of methamphetamine.

If you find the defendant "guilty" you must also answer the following: Which of the following offenses did you unanimously find the defendant conspired to commit:

[checked] Manufacture a mixture or substance containing a detectable amount of methamphetamine

Dated: 6/17/04

[Signed by jurors]

Verdict Form E

We, the jury, find the defendant Sherry Woodard guilty of the crime of conspiracy to distribute pseudoephedrine, knowing or having reasonable cause to believe that it would be used to manufacture methamphetamine as charged in Count Five of the Indictment, under Instruction No. 40.

Dated: 6/17/04
[Signed by jurors]

EXCERPTS FROM TRIAL TESTIMONY OF JEFF SUTHERLAND:

Q Sir, did you have an opportunity to execute a state search warrant on the home that you believe was Lonnie Weston's on March 23rd of the year 2000.
A Yes, Sir, I did.
Q What caused you to believe that this home was owned or occupied by Mr. Lonnie Weston?
A Speaking with residents in the neighborhood, in that area, just –
Q Had you ever seen Mr. Weston at the home prior to the execution of that search warrant on March 23rd of the year 2000?
A No, Sir, not at that time. It was speaking with the area residents that I learned Mr. Weston resided there.
Q Okay. So how did – tell me how it came about that you executed the search warrant. What happened? [Tr. 17]
A At that time I was employed with McDonald County Sheriff's Department, as I said, and I had some investigators from Boone County, Arkansas, came up following up on some investigation that hey were doing, and they asked for some assistance going out to Mr. Weston's residence. I want out there with them and we attempted to make contact with Mr. Weston at that time to explain to him why we were there.
Q Where you successful?
A No, Sir. . . .
Q So you obtained some information to get a search warrant for the home of – the Weston home there in McDonald County?
A Yes, we did [Tr. 19]
Q Did you execute that Warrant?
A Yes, sir, I did.

Q As a result of the execution of that warrant, did you take some pictures and seize some property from that location?
A Yes, sir, I did.
Q Sir, I'm going to show you what has been marked as United States Exhibit 1 through 4 and 6 through 28 and ask if you can identify these photographs? Have you looked at the photographs, sir?
A Yes, I did.
Q And do you recognize those photographs?
A Yes.
Q Those photographs that you took at the time of the execution of the search warrant on Lonnie Weston's property on March 23rd of the year 2000?
A Yes, Sir.
Q Do they fairly and accurately depict the conditions of the items that you found that evening or that day at Mr. Weston's property?
A Yes.
MR. EGGERT: I think I indicated 6 through 28. . . . It's 6 through 24 and then 27 and 28.
Q Is that what your observations indicate, Officer Sutherland? [Tr. 20]
A It stops at 24 and then goes 27 and 28.
MR. EGGERT: At this time I move for admission of United States Exhibit 1 through 4, 6 through 24, and 27 and 28. . . . .
COURT: . . . Government's Exhibit 1 through 4, 6 through 24, and 27 and 28 are admitted.
Q Sir, if I could direct your attention to the video monitor, and also the jury's as well. This is United States Exhibit 1. What does United States Exhibit 1 depict, sir?
A This would be a photograph of the Weston driveway looking south from the residence.
Q Did you take this photograph?
A Yes, I did.
Q Where would the Weston property be located in relation to this picture?

A In relation to this picture, it would be behind the photographer and off to the right.
Q I'm going to show you United States Exhibit 2. What does [Tr. 21] this picture depict?
A It's a picture of the residence itself.
Q Describe what the residence is.
A It's a couple of single-wide mobile homes that had been placed together and then a roof was built over the two.
Q Okay. So there's two mobile homes attached to each other?
A Yes.
Q Connected by this roof?
A Yes.
Q . . . What does United States 3 depict?
A This is a work shed that was located to the east of the residence in the front yard area.
Q Did you have an opportunity to examine the interior of this shed?
A Yes, we did.
Q Here is another picture of that. Is that a close-up picture?
A Yes.
Q Of the shed?
A Yes.
Q What did you find inside the shed, sir?
A Inside the shed there was a wood burning stove, a small wood burning stove. [Tr. 22] . . . .
Q Exhibit No. 4, I'm going to remove it from the screen now and direct your attention to Exhibit No. 6. Is this the stove that you're referring to ?
A Yes, it is.
Q This is a picture that was taken at the scene at the time you executed the warrant?
A Yes.
Q Describe what is inside the stove.
A There's some coffee filters. It contained what we referred to as pill material or pill waste.
Q Now, as an investigator with the McDonald County Sheriff's Department and also with the Southwest Missouri

Drug Task Force, you've had the opportunity to see various methamphetamine labs in various stages of assembly and disassembly?
A Yes, I have.
Q Now often have you had the opportunity to engage in a search involving methamphetamine laboratories or methamphetamine laboratory waste?
A Hundreds of times.
Q Prior to March 23rd of 2000, had you had opportunities execute search warrants involving methamphetamine labs and waste? [Tr. 23]
A Yes, I have.
Q Sir, describe the items that are inside that wood burning stove and how they relates to methamphetamine production.
Okay. The coffee filters, they contain what we call pill waste. The pill waste basically is from the initial step of manufacturing of methamphetamine, the ephedrine or pseudoephedrine tablets are ground into a fine powder and placed into a jar, on top of which a person would ad methanol or Heet, and that would extract the ephedrine or pseudoephedrine out of the tablets, and the liquid would contain the ephedrine or the pseudoephedrine, and the material that settled to the bottom would be powder, such as corn starch and the other items that actually make up the pill, and it is then filtered through a coffee filter. The ephedrine will go into another jar. The material that's left over in the coffee filter is what we refer to as pill waste or filing material, and some of that was found in the coffee filters which was found in the wood stove.
Q Thank you. I want to show you now on the screen what's been marked as United States Exhibit 7. Do you recognize that object?
A Yes I do.
Q What is that object?
A That's a propane cylinder. [Tr. 24]
Q Have you seen these propane cylinders in methamphetamine laboratory sites?

A Yes, I have.
Q Would you describe for us how this type of propane cylinder would be used in the manufacturing process?
A These types of propane cylinders commonly are used to store anhydrous ammonia when it's stolen from the farm supplies.
Q And anhydrous ammonia is an essential ingredient in the production of methamphetamine?
A Yes, it is?
Q This photograph indicates that there is a blue discoloration or blue spray painting on the top of this tank. Is that significant to you?
A Yes it is.
Q And why is that?
A To me as an investigator, it would show that someone is attempting to conceal the storage on anhydrous ammonia.
Q Why would this blue spray paint indicate that this would be a concealment-type activity?
A When anhydrous ammonia is stored in these type of containers, the anhydrous ammonia reacts with the brass fittings at the top, and it will actually turn them kind of a greenish-blue and in some cases that greenish-blue discoloration will drip onto the tank itself. [Tr. 25]
Q Have you seen tanks such as this in other meth labs that you've investigated and spray painted in a similar way?
A Yes, I have.
Q I'm going to show you now United States Exhibit 8. What does this picture depict?
A The smaller tank is the one we had just seen and then to the right of it is the larger propane style tank. These were leaned up against a split rail fence that separates the driveway from the front yard area.
Q And you took a close-up picture of the tank valve on United States Exhibit – this larger tank, you took a close-up of the valve mechanism on the top of the tank?
A Yes, I did.

Q I'm going to show you what's been marked as United States Exhibit 9. Is that the picture that you've just described?
A Yes.
Q Would you please refer to us about this discoloration that you talked about earlier?
A Yes. As I mentioned, the anhydrous ammonia when stored in these type of containers, it reacts with the brass fittings at the top of the tank. And inside of this one you can see the discoloration that I had mentioned.
Q Where I'm pointing with my pen, is that the discoloration you're talking about?
A Yes, sir. [Tr. 26]
Q Would you describe what that looks like?
A To me looking at it, it's evidence of anhydrous ammonia had been in the tank at one time.
Q What color?
A It's bluish-green.
Q Have you seen this before?
A Yes, I have.
Q On other methamphetamine laboratory locations?
A Yes, sir.
Q Now, you also conducted a search inside the residence?
A Yes, we did.
Q You found items that also were indicative of methamphetamine distributive activity?
A Yes.
Q I'm going to show you what's been marked as United States Exhibit 10. Do you recognize this box and the item on top of it?
A Yes, sir, I do.
Q What is it?
A It's some sort of Ziploc-style baggies that we commonly see at drug houses.
Q You conducted a search of this residence on that evening?
A Yes, we did.

Q Did you find anything that would indicate any type of hobby or other legal activity that would justify the presence [Tr. 27] of those baggies?
A No, sir, I didn't.
Q And, furthermore, for the record, while you were conducting the search, did you find any personal property that belonged to the defendant?
A Yes, we did.
Q What kind of personal property did you find at the residence?
A We found some – referring to like personal mail, that kind of stuff?
Q Personal mail.
A Yes, we did find some personal mail. We found –
Q What about clothing?
A Clothing. We found a lot of stuff inside the residence.
Q What did that indicate to you about whether or not the defendant lived at that residence?
A It appeared to us that he did live there.
Q What's the baggies, what are they used for in the methamphetamine distributive process?
A To pack methamphetamine.
Q United States Exhibit 11, this is a baggie with a cut corner. What is significant about this baggie, sir?
A This is a common method for people to package their methamphetamine when they don't have baggies. They'll cut the corners off, put the methamphetamine inside the bag, then heat [Tr. 28] seal it with a cigarette lighter or other heat source.
Q And United States Exhibit 12 depicts?
A It's a photograph of the same bag where it was found in the trash can.
Q Now, United States Exhibit 13 depicts what, sir?
A Two scales that were found in the residence. One's a digital scale, the other was a small plastic scale.
Q Where were these scales found in the residence?
A In the bedroom area.

Q Which bedroom area was - - is there only one bedroom in the trailer?
A There were three bedrooms.
Q Which bedroom, based upon the personal items that you found, would you characterize this bedroom as belonging to?
A I believe this one was found in the right-hand bedroom as you went in through the front door. We determined that would probably be Stephanie Weston's bedroom.
Q Who is Stephanie Weston?
A That's Lonnie's daughter.
Q Tell me, sir, again, what are the scales used for?
A It's to weigh methamphetamine for distribution.
Q And have you seen these in laboratory sites?
A Yes, sir, a lot.
Q Exhibit 14?
A That's a closer picture of the Tanita digital scales. [Tr. 29]
Q And Exhibit 15?
A Is a closer photograph of the plastic scales that were just shown.
Q These are both pictures of other items in . . . Exhibit 13?
A Yes
Q I'm going to show you what's been marked as the United States Exhibit 16, ask if you can identify this?
A Yes. This is a pill bottle. It's Max Brand two-way ephedrine bottle. Beside it is some blue-colored, Ziploc- style bags.
Q What's the significance to a drug investigator with the blue Ziploc bags and the ephedrine?
A The ephedrine, as I mentioned earlier, is the primary ingredient for manufacturing methamphetamine.
Q Ephedrine or pseudoephedrine?
A Correct.
Q And the blue baggies, again, are indicative of what to you?
A Packaging of methamphetamine.
Q All right. Exhibit No. 17 depicts what, sir?
A There's a short section of vinyl tubing. Beside it is a receipt and then another bottle of ephedrine.

Q What's the purpose of the tubing, in you experience as a methamphetamine laboratory investigator? [Tr. 30]
A The tubing is used in the final stage of methamphetamine production when the methamphetamine is actually extracted from the liquid using hydrogen chloride gas.
Q And in this picture there is a receipt?
A Yes, right next to the tubing.
Q Picture 18 is a close-up of that receipt?
A Yes, sir, it is.
Q Because the light is so bright, I would like you, sir, to tell us what this photograph depicts that receipt as purchasing?
A There are several – or there's six items purchased, the bottom item being 1 gallon of muriatic acid.
Q Again, as a methamphetamine investigator, what is significant about muriatic acid?
A In the final stage of methamphetamine production, as I said, the muriatic acid is mixed with salt or I've seen in some cases aluminum foil. It's used to produce hydrogen chloride gas which goes through the tubing. The tubing is inserted into the methamphetamine liquid and the hydrogen chloride gas turns the methamphetamine into powder, which is then filtered out.
Q All right. I'm going to show you now what's been marked as United States Exhibit 19. Do you recognize that item?
A Yes, I do.
Q That was an item that you found at the Weston residence [Tr. 31] on the 23rd of March?
A Yes.
Q What is it?
A The top item is a metal spoon with a small piece of cotton in the center of it and then there's two glass specimen tubes.
Q . . . What's the purpose of the spoon with the cotton residue in the center of it?
A The methamphetamine is placed in the spoon, which is then heated, turning the methamphetamine into a liquid. The liquid is then drawn up into a syringe. The cotton is used as a filter while doing that.

Q And United States Exhibit 20 . . . what does that depict?
A Photograph of another spoon.
Q With the same type of item in the center of the spoon?
A Yes.
Q This, again, indicates what to you?
A Intravenous use of methamphetamine.
Q In fact, you found some items that – syringes that would indicate intravenous use of a drug?
A Yes, we did.
Q At the residence?
A Yes. [Tr. 32]
Q Show you a picture of United States Exhibit 21. Do you recognize those items?
A Yes, I do.
Q What are they?
A There's a disassembled hypodermic syringe and then there's a spoon with some blood on it.
Q There's also a syringe above it, is there not?
A No. That's part of the same syringe, just been disassembled.
Q This part right here, that's part of this syringe?
A Yes.
Q Okay. And that red substance inside the syringe?
A Blood.
Q Again, what does it indicate to you as a methamphetamine laboratory investigator?
A It's evidence of intravenous use of methamphetamine.
Q Twenty-two indicates what, sir?
A Those two green items are small sections of plastic straws.
Q And, again, the plastic straws as a methamphetamine investigator would be indicative of what?
A Those are commonly used to snort methamphetamine.
Q Exhibit 23, what does this picture depict, sir?
A A glass light bulb with the filament removed.
Q Why did you feel it significant to take a picture of this [Tr. 33] item?

A The burn residue on the bulb is indicating somebody used it to smoke methamphetamine.
Q Twenty-four, Exhibit 24 depicts what?
A Another hypodermic syringe.
Q Where did you find these hypodermic syringes?
A In Mr. Weston's bedroom.
Q The defendant, Lonnie Weston's, bedroom?
A Yes. Yes, sir.
Q Now, while you were at the scene executing the search warrant -- let's step back up and actually ask you, who was present at the location when you began executing the warrant?
A . . . Lloyd Bowers, Kenneth Tinker and Gary Evans.
Q Were any of those individuals in the process of actually using an intravenous needle, when you walked into the residence?
A Yes, Kenneth Tinker was.
Q He was shooting up?
A Yes.
Q While you were at the residence, did an individual drive up?
A Yes.
Q Who was that?
A Sharon Dawinda. She drove up. She had Russell Wishon as [Tr. 34] a passenger.
Q What happened when Mr. Wishon observed that there was a search warrant being executed at the residence?
A He and Sharon fled the scene.
Q What happened as he was fleeing the scene?
A McDonald County Sheriff's Deputy Jared Richmond pursued them out of the driveway.
Q Did you observe the end of the pursuit?
A Shortly after the pursuit ended.
Q Where did Mr. Wishon go as he was being chased by the police?
A He ran into a creek bed.

Q I'm going to show you United States Exhibit 27. What does this picture depict, sir?
A This is KK Highway. From this view, Lonnie Weston's residence would be to the right and through the woods maybe a hundred yards.
Q And United States Exhibit 28, what does this picture depict?
A That's the creek bed where Mr. Wishon was apprehended.
Q And that's where you observed him being taken into custody by the other deputy sheriff?
A Yes.
Q Now, in addition to the items that you have taken photographs of at the residence, you also found a safe at the [Tr. 35] residence?
A Yes, we did.
Q Where was the safe located in the residence?
A It was in Lonnie Weston's bedroom.
Q This is the bedroom you surmised was Mr. Weston's?
A Yeah.
Q And the reason you surmised that is because of what factors?
A There was personal items bearing Mr. Weston's name back there in the bedroom area.
Q And clothing that appeared to belong to him?
A Yes.
Q Sir, did you also obtain a search warrant to search the interior of the safe?
A Yes, we did.
Q And what did you find inside the safe after you conducted a search of it?
A We found a book entitled Secrets of Methamphetamine Manufacturing. It was written by Uncle Fester. . . .
Q Sir, I'm going to show you what's been marked as United States Exhibit 30. Do you recognize this item?
A Yes, I do.
Q And what is this item? [Tr. 36]
A This is the book that we seized out of the safe.

Q All right. And how do you know that's the same book you seized out of the safe?
A Because it's been in my custody.
Q In fact, you kept it in your personal custody ever since you seized it; is that correct?
A Yes, Sir.
Q And why did you do that?
A Because in my position I instruct and I educate civic organizations, other police officer, fire departments on methamphetamine labs, how to spot them, how to investigate them, and I use this book to show the other people just how available the knowledge is.
Q And is this book in the same condition or substantially same condition as it was in at the time you seized it on March 23rd of 2000?
A Yes, it was. . . . . [Tr. 37] . . . .
Q Apart from the paper clips not being there at the time you seized the book, is everything else about the book substantially the same?
A Yes, it is.
MR. EGGERT: . . . I move for admission of United States Exhibit 30. . . .
COURT: . . . [Tr. 38] . . . . Exhibit 30 is admitted. . . .
Q All right. Sir, Have you ever seen a book like this before in any of the searches you've done on methamphetamine laboratories?
A Yes, I have.
Q So this is a book that's a common reference guide to people who manufacture methamphetamine?
A Yes. . . .
Q Sir, you've had an opportunity prior to coming to court here today to review items in this book, have you not?
A Yes, I have.
Q Specifically, I want to call our attention to page 119 [Tr. 39] and 120 of this book. What does page 119 and 120 of this book describe how to do?

A 119 . . . gives detailed instructions on how to manufacture methamphetamine with the lithium metal and liquid ammonia.
Q Why don't you tell us how a person -- without giving too much detail so that we all have that knowledge, perhaps -- but give us some detailed as to how a person manufactures methamphetamine using lithium metal and anhydrous ammonia.
A The first thing the person would have to do is obtain the ephedrine or pseudoephedrine, break it down using Heet. Once that's done, you have pure powder form of ephedrine or pseudoephedrine. Once that is obtained, a person would have to have lithium-style batteries which they would tear open, and each battery would contain about 1 gram of lithium in the form of a strip. That strip is torn into pieces and placed into the powdered ephedrine our pseudoephedrine. Once that's done, the cook would apply the anhydrous ammonia to that powder and to the lithium strips and that would start the reaction.
Q And does the book describe that process?
A Yes, it does.
Q I also would direct your attention, sir, to page 136 and 137 and ask you what method is described there for the manufacture of methamphetamine? [Tr. 40]
A That's reduction of pseudoephedrine with hydriotic acid and red phosphorus.
Q That is a different procedure than the use of lithium metal?
A Yes, it is.
Q How does it differ from the use of the lithium metal?
A Hydriotic acid, red phosphorus method, those two items would replace the lithium strips and the anhydrous ammonia.
Q All right. Thank you. Now, did you have an opportunity to conduct another search at the home of Billy Brassfield on or about October 16th of 2000?
A Yes, sir, I did.
Q And would you describe how it was on that day that you came to search Mr. Brassfield's residence? I think to answer

that question you have to back up a couple of days, don't you?
A Yes, I do.
Q Okay. Let's go back to October 13th. What happens on October 13th that causes you to go down this path?
A At that time I was working for the McDonald County Sheriff's Department as a patrol officer. I was in the Sims Store area and I had occasion to conduct a traffic stop on Frances Duckett's vehicle. It was Rick Brassfield's vehicle; Frances was driving it. It had and expired registration. And when I initiated the traffic stop, she pulled over. Frances [Tr. 41] exited the vehicle and met me at my patrol car and asked me if I was still interested in busting people that were manufacturing methamphetamine.
Q That's the defendant Ms. Duckett who said that?
A Yes.
Q And how did you respond to Ms. Duckett's statement?
A Of course I was.
Q Okay. What did she say in response to that?
A She said that she was tired of them and she would hand them to me on a silver platter.
Q Did she . . . continue the conversation. What happened?
A She said told me that it would be worth my time to look in the woods across the road from Sims Store.
Q Were you familiar with where the Sims Store was located?
A Yes, sir.
Q Describe for us the Sims General Store.
A Sims General Store is located eastern side of McDonald County at the intersections of Highway 90 and Highway E in a pretty remote area.
Q At that time Ms. Duckett approached you, who, to the best of your knowledge, actually owned the store?
A Billy, Rick Brassfield.
Q So did you take Ms. Duckett's advice and search the woods beside the Sims General Store? [Tr. 42]
A Yes, sir, I did.
Q And what did you find there?

A Located among some round bales of hay I found two large cylinders which appeared to have at one time contained anhydrous ammonia, and I found a burn pile which contained some partially burned methamphetamine lab trash.
Q So what did you do?
A We left the area, obtained a search warrant and went back to the scene and recovered those items.
Q . . . What did you do with those items after they were recovered?
A They were listed as being recovered and then they were disposed of in accordance with the state guidelines governing those type of items.
Q Why would you dispose of those type of items?
A Because they are considered hazardous waste, contamination scene.
Q What type of items were they, again?
A Two large cylinders that at one time had contained anhydrous ammonia and then some lab trash that was found near a burn pile.
Q All right. In fact, sir, going back to the search that took place on March 23rd of the year 2000, you seized some items on that day as well, did you not?
A Yes, we did. [Tr. 43]
Q Some of the items that you seized were laboratory trash that you've just described?
A Yes.
Q And those items were destroyed based upon your policy and procedures?
A Yes, sir.
Q There were also some other items that were seized that were taken into evidence?
A Yes.
Q And what happened to those items that were taken into evidence, besides the book that you've already talked about?
A Those were secured at the McDonald County Sheriff's Department evidence facility.
Q Then after a period of time, what happened to those items?

A Shortly after that, there was a change in administration at the sheriff's department and I went to the drug task force, and during those changes the evidence was inadvertently destroyed.
Q And why was the evidence inadvertently destroyed?
A . . . I guess at that time there was not a real good system set in place for handling that evidence, and the administration apparently just got it confused as being old evidence and destroyed it. [Tr. 44]. . . .
Q Is this on the way to anything?
A Not really, It's out by itself.
Q How big is the population of Pineville?
A I believe their population now is around 600 people.
Q You work in McDonald County so you have some knowledge about that issue?
A Yes.
Q . . . [G]oing back to the burn pile across the street from the Sims store, you do what . . . after you've discovered this burn pile?
A We obtained a search warrant and went back and recovered those items.
Q And after you recovered those items, you attempted to serve the search warrant on the property owner of this field?
A Yes, we did.
Q Who was the property owner of the field at that time?
A Billy, Rick Brassfield.
Q Do you go to Mr. Brassfield's residence?
A Yes, we did.
Q Is that located – where is that located? [Tr. 48]
A From Sims General Store, its probably 3 or 4 miles to the south on the west side of the property.
Q Describe what happened when you got there.
A As we came to the entrance to the driveway, we met people coming out. I spoke briefly with the occupants of that vehicle and asked them if there was anybody home, and they stated not that they knew of, and I mentioned that I had some

paperwork to serve, and then they said that there was a couple people home.
Q Did you drive up to the residence?
A Yes, sir.
Q And who was at this residence?
A Paul, Cody Guinn and Frances Duckett's youngest boy.
Q What did you do when you arrived at the residence?
A We knocked on the front door, again, trying to make contact with Mr. Brassfield. Instead, we were met by Cody Guinn and Frances's youngest son. We asked if Rick was around and they stated not that they knew of. At that point we heard a generator running from behind the house. We went around the house to see if there was anybody back there.
Q What did you see when you arrived at the back of the house?
A As I walked around the west end of the residence, there was a Rubbermaid trash can that was knocked over and spilled out on the ground. I saw some Prestone starting fluid cans [Tr. 49] Which I noticed the bottoms had holes punched in them.
Q Again, what is that indicative to you when you see a Prestone starting fluid can with a hole punched in it?
A The only reason that that would have – or that that would happen is for methamphetamine manufacturing.
Q Why is that?
A Because the methamphetamine cooks want the ether out of the cans.
Q And so in order to do that, what do they do?
A They hold the can upside-down to relieve the pressure, and once the pressure's been relieved. They use some type of tool to punch a hole in it and drain it out.
Q You see this can with this punched hole in the bottom of it and this other laboratory trash. What do you do at that point?
A We secure the scene and apply for a search warrant.
Q Do you get a state search warrant?
A Yes, sir, we do.

Q And you arrive back at the location?
A Yes.
Q You had an officer stay at the location to keep it secure?
A Yes, sir. We had two officers there.
Q When you arrive back, was the location in the same condition that it had been in at the time you had left? [Tr. 50]
A Yes.
Q So you execute the search warrant?
A Yes, we did.
Q In the execution of the search warrant, you take pictures again?
A Yes, we did.
Q Again, the pictures are there to document what you see?
A Correct.
Q Sir, I'm going to show you what's been marked as United States Exhibit 31 through 50, 52 through 82, and 845 through 87, and I'm going to ask you if you can identify these pictures. . . .
Q Did you take those pictures?
A Yes, I did.
Q Do those pictures fairly and accurately depict the condition of Mr. Brassfield's property during the execution of your search warrant on October 16th of 2000?
A Yes.
MR. EGGERT: At this time I would move for admission of United States Exhibit 31 through 50, 52 through 82, and 84 through 87. [Tr. 51] . . . .
COURT: Exhibits 31 through 50 are admitted, Exhibits 52 through 82 are admitted, Exhibits 84 through 87 are admitted.
Q . . . This is United States Exhibit 31. What does this picture depict?
A It's a photograph of the Brassfield residence.
Q Again, the Brassfield residence is located where?
A In McDonald County off of Highway E.
Q Why don't you describe the residence for us?

A Single-wide mobile home. Where the satellite dish is located would be the west end and off to the right would be the storage shed. Directly behind that would be where we heard the generator running.
Q When you call it the storage shed, is that also sometimes referred to as the chicken house?
A No, sir. The chicken house – from this view the chicken house would be located to the left maybe a hundred yards away near the entrance.
Q It's also on the same property?
A Yes.
Q So you conducted a search inside the trailer? [Tr. 52]
A Yes, we did.
Q And when you got there, can you describe what you – you also described what you saw. What did you smell?
A We could smell a chemical odor. The chemical odor was especially strong at the back of the house where the storage shed was located. Very, very strong chemical odor.
Q As a methamphetamine investigator, have you smelled that certain type of chemical odor before?
A Yes, sir.
Q What is the chemical odor that you smelled associated with?
A Methamphetamine manufacturing.
Q What causes that particularly pungent smell that you've described?
A Anhydrous ammonia and the chemical solvents that are located also in the meth labs.
Q And you conducted a search inside this trailer?
A Yes, we did.
Q I want to show you what's been marked as United States Exhibit 32. What is that item?
A It's a blue Igloo ice chest which was found in the west bedroom.
Q All right. What was contained inside the ice chest?

A We found the bottle in view there. We also found a yellow-colored, zippered bag that contained some lithium [Tr. 53] batteries. We found a Tupperware container of ephedrine which had been broken down. We found some methamphetamine also, and some coffee filters which tested positive for methamphetamine.
Q Exhibit 33 depicts what. Sir?
A The items that I just mentioned. The yellow bag at the tope is the zippered bag that contained the lithium batteries. Directly below it, the coffee filters tested positive for methamphetamine. To the left of what would be the Tupperware container there's a section of hard plastic tubing and then there's a spoon. There's also a glass pipe there with some burnt residue. The coffee filters lined up at the bottom had powder in them which also tested positive for methamphetamine. Then there's three packages there of ephedrine or a pseudoephedrine product.
Q Now, you seized some of the items in this cooler and sent them to the laboratory for testing?
A Yes, I did.
Q I want to show you what's been marked as United States Exhibit 88, 89, 91, and let me go retrieve United States Exhibit 90. Are these items that you retrieved from the interior of this blue cooler?
A Yes.
Q And did you actually seal these items with the packages that you have in front of you? [Tr. 54]
A Yes, I did.
Q And you submitted them to the laboratory for testing?
A Yes.
Q Apart from the laboratory testing seals, do the items appear to be in the same condition as they were in at the time that you seized them?
A Yes.
Q And you know that you seized these items because you sealed them and your signatures are on these bags?

A Yes.
MR. EGGERT: At this time I move for admission of United States Exhibit 88, 89, 90, and 91. . . .
COURT: I'm going to conditionally admit them subject to the chemist connecting it up.
Q . . . Exhibit 88 pertains to what item in this picture?
A These are the coffee filters that are located directly [Tr. 55] under the yellow bag in the upper right-hand corner. . . .
Q And, again, in your experience as a law enforcement officer involved in methamphetamine investigations, what's significant about the coffee filters?
A They're used to filter out the final product, and they're also used to filter out the ephedrine and pseudoephedrine.
Q Next I'm going to show you what's been marked as United States Exhibit 89. Again, what does this item pertain to in the picture that you have in front of you?
A It's the rectangular Tupperware box located right there. It contained the powder which we sent to the crime lab.
Q That you suspected was methamphetamine?
A Pseudoephedrine. . . .
Q United States Exhibit 90 pertains to what in this picture?
A Lower left-hand corner, this is the packages of the pseudoephedrine, cold pills.
Q Okay. And where would those items be located in this photograph?
A Lower left-hand corner. [Tr. 56] . . . .
Q Then, finally, Exhibit 91 pertains to what item?
A This Tupperware container contains the coffee filters that are lined up at the bottom of the photograph, the ones that contain the powder. . . .
Q Did you place them in the Tupperware container?
A Yes, I did.
Q Why did you do that?
A Just for transportation, just storage.
Q To send t[illegible]n to the lab?
A Yes, to send them to the crime lab.

Q In fact, picture 34 depicts what, sir?
A The pseudoephedrine bottles that we seized.
Q That were sent to the crime lab and are found in United States Exhibit 90?
A Yes.
Q What does Exhibit 35 depict?
A Hypodermic syringe.
Q Where did you seize this item?
A Also out of the cooler.
Q Did you submit this to the crime lab for testing?
A Yes, we did. [Tr. 57]
Q I'm going to show you what's been marked as United States Exhibit 92 and ask if you can identify this item.
A Yes, I can.
Q And what is that item?
A This is the syringe that we seized out of the cooler.
Q How do you know that?
A Because it was sealed by me and it's my writing on the bag.
Q And was it sent to the laboratory also for testing.
A Yes.
MR. EGGERT: At this time I move for conditional admission of United States Exhibit 92. . . .
COURT: Ninety-two is admitted conditionally.
Q Again, the only change in this bag is the blue seal of the lab technician?
A That's correct.
Q Sir, I'm going to show you what's been marked as United States Exhibit 36 and ask if you can identify this object?
A Yes, sir, I can.
Q What is it?
A That's the yellow zippered bag that we found inside the cooler in the west bedroom. Laid out around the bag was the lithium batteries that we found in the cooler – or in the bag. [Tr. 58]
Q In the bag?

A (Nods head).
Q Sir, did you seize that bag?
A Yes, we did.
Q And the batteries?
A Yes.
Q I'm going to show you what's been marked as United States Exhibit 36A and ask if you can identify this object?
A Yes, sir. Yes, that's the bag we seized.
Q How do you know it's the bag that you seized?
A It's the same as in the photograph. I seized the bag. I secured it.
Q You secured it in your evidence locker?
A Yes.
Q In a secured box?
A Yes.
Q When you retrieved it for trial, you were able to find the box?
A Yes.
Q Inside the box contained what item?
A This zippered bag, inside which is numerous packages of lithium batteries.
Q The box that you withdrew from the evidence locker had your seal and signature on it?
A Yes, it did. [Tr. 59]
Q It had not been tampered with?
A No.
Q This bag is in the same or substantially similar condition as it was when you seized it on October 16th of 2000?
A Yes, same bag.
MR. EGGERT: At this time I move for admission of United States Exhibit 36A . . .
COURT: In any event, its admitted.
Q . . . Why don't you show us what's inside this bag?
A May I take them out individually?
Q Take them out.
A Loose batteries inside it.

Q You can leave those in it. Again sir, what's the significance to you as an investigator of methamphetamine laboratories when you see these many batteries in a centralized location?
A To me it's evidence of a methamphetamine manufacturing using anhydrous ammonia.
Q Why is it that the batteries are significant to the [Tr. 60] anhydrous ammonia method?
A The cooks will peel open the batteries and take out the lithium strips.
Q Okay, sir, I'm going to show you now what's been marked as United States Exhibit 37. It's a photograph. Can you identify that object?
A Yes.
Q Again, what is that object?
A It's what we term as a cut corner bag. It's a sandwich style bag, plastic bag, had the corner cut off of it.
Q Why would the person who's been involved in meth distribution do such a thing like that?
A To package their methamphetamine in.
Q In fact, you saw these type of bags at who else's residence?
A Lonnie Weston.
Q On March 23rd of 2000?
A Yes.
Q I'm going to show you what's been marked as Exhibit 38. Can you identify that object?
A It's a Days Inn plastic bag. The items laid out on the floor are blister packs of pseudoephedrine. The blister packs had the pseudoephedrine removed.
Q Again, as a methamphetamine investigator, what is the significance to you of seeing all these blister packs that are [Tr. 61] empty at this location?
A To me it would be – it would show evidence of methamphetamine manufacturing.
Q What do they call this when people get together to remove these pills out of their blister packs?

A Popping pills out of their blister packs.
Q There's also a receipt that was found inside this particular bag, was there not?
A Yes, there was.
Q And is that a close-up of the receipt?
A Yes.
Q Who's it made out to?
A It's a child support receipt made out to Frances Duckett.
Q The defendant?
A Yes.
Q That's Exhibit 39. Exhibit 40 is another photograph that depicts again, what, sir?
A Popped blister packages of pseudoephedrine.
Q That's quite a bit, isn't it?
A Yes.
Q How would you characterize that in terms of labs that you've done in the past?
A Its more than we normally see.
Q Again, you also found some personal mail? [Tr. 62]
A Yes.
Q Who was it addressed to?
A Frances Duckett.
Q And did you also find mail at the residence of Mr. Brassfield as well?
A Yes, we did.
Q I'm going to show you what's been marked now as United States Exhibit 42, ask if you can identify that object?
A Yes, sir, I can.
Q What is it?
A It's a small kitchen-type digital scale.
Q What do these type of scales, what are they commonly used for?
A To weigh methamphetamine for distribution.
Q And you seized this particular scale?
A Yes, I did.

Q And I'm going to show you what's been marked as United States Exhibit 42A. Can you identify this object?
A Yes, I can.
Q What is it?
A This is the scale I seized.
Q And you're sure it's the same scale that you seized?
A Yes.
Q How do you know that?
A Because it was in our evidence facility. [Tr. 63]
Q And you locked it up in a box?
A Yes.
Q Had a seal around it?
A Yes.
Q And you removed the seal?
A Yes.
Q And it contained the item you seized?
A Yes.
Q All right. I characterize this as a photograph, too.
MR. EGGERT: At this time I move for admission of United States Exhibit 42A, which is the actual electronic scale. . . .
COURT: 42A is admitted.
Q You also had an opportunity, sir, to conduct a search on the exterior of the residence as well?
A Yes.
Q And you found a great many items in the exterior of the residence?
A Yes, I did.
Q I want to show you a photograph that's marked as United States Exhibit 43. What does this photograph depict?
A It's a photograph of the items that we recovered from the storage shed located behind Brassfield's trailer.
Q And what is in this photograph? [Tr. 64]
A A meth lab.
Q When you say a meth lab, what is it that causes you to believe it's a methamphetamine lab?

A ...[T]here's various types of solvents, tubing, acids, and then some product which tested positive for methamphetamine.
Q ...Picture 44 depicts – is that a close-up of what was in 43?
A Yes it is.
Q And then you took pictures of the individual jars that you seized?
A Yes.
Q Exhibit 45 depicts what, sir?
A A small glass jar that contained acid.
Q What is the significance of these jars with acid when you are investigating a methamphetamine laboratory?
A We see items all the time that are removed from their original containers. Sometimes methamphetamine cooks will save acids or they'll save solvents for future cooks.
Q All right. Exhibit 46 depicts what?
A Another jar of acid.
Q And you know that these items contained acids because you perform what type of test?
A We perform a pH strip test.
Q The significance of the acid in the manufacture of [Tr. 65] methamphetamine, what is the meth cook attempting to do with the acid when he's manufacturing methamphetamine?
A During some of the last stages of methamphetamine production, the methamphetamine is actually in a liquid solution. The meth cook will then use hydrogen chloride gas or muriatic acid with either table salt, rock salt, or aluminum foil, and they will put it into another container which we call a hydrogen chloride gas generator. They'll put like rock salt in the bottom of the jar, pour the acid on top of it. It'll produce hydrogen chloride gas, which goes through the tubing. The tubing will be placed into the methamphetamine solution and it will actually turn the methamphetamine into a powder which will settle to the bottom, and then its filtered out again.

Q Isn't there also something to this involving the leveling of the pH balance in the methamphetamine?
A The methamphetamine manufacturers use Red Devil lye to
Q I apologize. We'll be getting to that. I jumped the gun. I guess I don't know how to manufacture methamphetamine as well as I thought. Forty-seven depicts what, sir?
A On the left-hand side is a gallon jug of acid with No. 7 written on the jug. On the right-hand side where the No. 3 is written, it was a jar of lithium-style batteries.
Q So why do you believe that Jar No. 3 contained [Tr. 66] lithium-style batteries?
A We can look through the jar itself and it was obvious it contained batteries.
Q Have you seen these type of batteries before?
A Yes.
Q Again, the meth cook to make methamphetamine takes the lithium out of the battery. How does he do that?
A Couple pairs of pliers and they just tear it open, take the strips out.
Q I'm going to show you now what's been marked as United States Exhibit 48, ask if you can identify this object.
A Another jar which contained an acid.
Q Forty-nine?
A Another jar which contained acid.
Q United States Exhibit 50?
A Another jar which contained acid.
Q These numbers that are written on the jar, those are the numbers that you assigned to these items when you actually conducted your search warrant?
A Yes.
Q United States Exhibit 52?
A It's a jar that contained some wet rags that had a very strong ammonia odor to them.
Q United States Exhibit 53?
A Another jar of acid. [Tr. 67]

Q Now, 54 is the Red Devil lye that I was jumping the gun on. What is the purpose of the Red Devil lye in the manufacturing process?
A During some stages of the methamphetamine manufacturing, the methamphetamine is actually acidic. For it to be consumed by a human, it has to be at or neutral in pH. So the Red Devil lye is used to adjust the pH down.
Q To get it down to zero?
A Yes.
Q United States Exhibit 55?
A Gasoline container which had acid in it.
Q Fifty-six?
A Another jar of acid.
Q Picture in United States Exhibit 57?
A Bleach bottle which contained some type of acid. We presumed it to be muriatic acid due to the fact that we found another jug of muriatic acid at the residence.
Q United States Exhibit 17?
A Another gallon container of acid which we presumed to be muriatic acid based on the fact that there was another jug of muriatic acid at the residence.
Q And United States Exhibit 59?
A One gallon jug of muriatic acid.
Q The significance of muriatic acid in the manufacturing process? [Tr. 68]
A It's used to make the hydrogen chloride gas which powders out the methamphetamine during the final stage.
Q United States Exhibit 60?
A Bottle of rubbing alcohol.
Q And rubbing alcohol, do you see this often in methamphetamine laboratories?
A Yes.
Q Again, what's the purpose of the alcohol?
A We've seen it used to extract . . . ephedrine, pseudoephedrine from the tablets. And I suppose they could also use it prior to intravenous use of methamphetamine.

Q What, to rub the arm down?
A Yes.
Q What does 61 depict?
A Gallon container of liquid.
Q Would this be an acidy liquid?
A Yes.
Q Sixty-two?
A Another jar of acid.
Q Exhibit 63?
A Another jar of acid.
Q There were lots of acid jars there?
A Yes.
Q Again, what is that indicative of to you when you see so [Tr. 69] much acid in one location?
A To me it would be indicative of a large methamphetamine operation.
Q What's this jar of? What's it a container of?
A It's a 5-gallon container of sodium hydrochloride, which we found out later was an industrial strength bleach.
Q This was unique to this particular type of search warrant?
A Yes. I still don't understand what they were doing with it. And we haven't seen it before that and we haven't seen it since in a meth lab.
Q Now, in addition to these items that contain acidy material, tell me, what did you do with these items after you took photographs of them?
A They were destroyed through the use of a DEA contract clean-up agency in accordance with guidelines governing that kind of waste.
Q The reason why you destroy items such as this is because of what reason?
A It's hazardous.
Q It would be difficult to maintain?
A Yeah. It would be illegal for our task force to maintain those type of items.

Q ...[Y]ou also had some items that you took samples of that you sent the originals to the laboratory for analysis? [Tr. 70]
A Yes, sir, we did.
Q I want to show you what's been marked as United States Exhibit 65 which you've indicated as No. 24. What does 65 depict?
A . . . [A] jar containing what we call a biphase substance.
Q What did you suspect this jar to contain?
A Ephedrine or pseudoephedrine.
Q So that's why you sent the entire jar to the laboratory for testing?
A Yes.
Q You maintained this sample just for your own office in case the jar was lost or destroyed inadvertently?
A Yes.
Q That's 24. Twenty-five. The larger jar is the item that you seized, and what is that item?
A Another jar of a liquid substance. Which, as you mentioned, we took the smaller sample and maintained it for our purposes.
Q But the larger sample which contained the bulk of the material you sent to the laboratory for analysis?
A Yes sir.
Q How would you package these items to send them to the laboratory? [Tr. 71]
A We would put them in a larger container which would have then been sealed with evidence tape.
Q Then you transport them to the laboratory?
A Yes.
Q Twenty-six – excuse me, 67, I apologize, which is your No. 26, what does this picture depict?
A It's a gallon-size jar that contained some powder substance.
Q Again, sir, did you send the large jar that you seized to the laboratory for analysis?
A Yes I did. . . .

Q Sixty-eight, what does 68 contain?
A Another glass jar which contained some powder.
Q Sixty-nine?
A Another glass jar which contained some wet filters, I believe.
Q Seventy?
A Stainless steel metal container containing some powder.
Q In fact, there was a great deal of powder in this container? [Tr. 72]
A Yes.
Q And you sent this entire container with the powder to the laboratory for testing?
A Yes, we did.
Q Seventy-one?
A It's a wet Prestone starting fluid box, . . . inside of this Prestone starting fluid box would be some powder.
Q You actually took a picture of the powder residue?
A Yes, we did.
Q That's United States 72. You also found some acetone, United States Exhibit 73. What's the purpose of the acetone?
A Acetone is used to clean up the methamphetamine. One of the earlier pictures you saw some coffee filters contained some powder which was a really nasty brown color. The acetone can be used to basically wash that powder and kind of clean it up a little bit.
Q United States Exhibit 74 depicts what?
A One-gallon can of acetone, quart can of acetone, and two, 1 gallon cans of Coleman fuel, and some Prestone starting fluid.
Q These are the cans that you saw that had the holes punched in the bottom of them?
A Yes. [Tr. 73]
Q What does the picture of United States 75 depict?
A That is what we referred to as a gas generator.
Q And again?

A The gas generator, again, this is where someone would put rock salt or table salt or aluminum foil and mix it with the muriatic acid. The muriatic acid would react with it to form hydrogen chloride gas, which would go up the tubing. One end of the tubing would be placed in with the liquid methamphetamine. The hydrogen chloride gas would turn that liquid into a powder which would settle to the bottom, and then the methamphetamine would be filtered out.
Q I'm going to show you what's been marked as 76. Can you identify this object?
A Another photograph of a different gas generator.
Q Seventy-seven.
A Another photograph of another gas generator.
Q So there were several gas generators at this location?
A Yes.
Q Now, United States Exhibit 78 depicts what item, sir?
A It's a small glass jar wrapped with black electrical tape.
Q Did you open the interior of that jar to see what was inside it?
A Yes, I did.
Q What did you find inside the jar? [Tr. 74]
A Some white powder which we believed to be pseudoephedrine.
Q And United States Exhibit 79, what does this picture depict?
A That's the contents of the jar.
Q You sent this jar to the laboratory for testing?
A Yes, we did.
Q I'm going to show you what's been marked as United States Exhibit 93. Can you identify this object?
A This is the jar that's in the photograph there.
Q And this jar is the jar that you sent to the laboratory for testing?
A Yes, it is.
Q How do you know that?

A It's the – its contained within a bag which I sealed. The outer part of the bag bears my writing.
Q … [E]xcept for the evidence technician at the laboratory opening it up for analysis, is this object in the same condition or substantially same condition as it was in at the time you seized it?
A Yes.
MR. EGGERT: At this time I move for admission of United States Exhibit 93 . . . .
COURT: Ninety-three is admitted conditionally. [Tr. 75]
Q Sir, I'm going to show you what's been marked as United States Exhibit 80. Do you recognize this object?
A Yes, I do
Q What Is it?
A It's a propane-style tank that contains anhydrous ammonia.
Q And how do you know or why do you believe it contains anhydrous ammonia?
A We were bleeding off the tanks prior to sending them with the disposal agency.
Q Bleeding them off. What do you mean by that when you say bleeding them off?
A Removing the anhydrous ammonia from within the tanks.
Q In that picture there's like a white fog emanating from the hose. What does that fog indicate?
A That's the anhydrous ammonia as its exiting the tank.
Q United States Exhibit 81, what does this picture depict?
A Another propane tank showing where we're bleeding off the ammonia.
Q United States Exhibit 82?
A Another photograph of the tank.
Q Again, this white fog-like cloud is the anhydrous ammonia escaping into the atmosphere?
A Yes. [Tr. 76]
Q What does United States Exhibit 84 depict?

A Its more Prestone Starting fluid cans with the holes punched in the bottom. Below them would be some packages of pseudoephedrine.
Q Eighty-five?
A It's a cardboard box containing what we call pulled lithium batteries. That would be the shells of the lithium batteries themselves. The inner part of the battery had already been removed.
Q That part that can't be used?
A Correct.
Q So these are discarded?
A Yes.
Q United States Exhibit 86 depicts what, sir?
A The 5-gallon container of sodium hydrochloride.
Q Where was this found?
A That was inside the red Jeep Cherokee that had Missouri registration showing that the vehicle belonged to Frances Duckett.
Q And what does United States Exhibit 87 depict?
A Package of coffee filters, the top left would be a small blue plastic funnel, the two round plastic items right next to it are the tops or the lids that would go to a hydrogen chloride gas generator, and then a filter mask out beside it.
Q Have you seen gas masks at these laboratories? [Tr. 77]
A Yes.
Q Why would you have a gas mask at a laboratory?
A To protect yourself from the fumes.
Q …[T]he fumes were pretty harsh that evening weren't they?
A Yes.
Q Where did you find these items?
A In Frances' vehicle.
Q Sir, after this you had an opportunity to obtain another search warrant for the chicken house?
A Yes, sir, we did.

Q Describe the chicken house as its located on the Brassfield property.
A It's located near the entrance – where Brassfield was living there's a long driveway, probably 150, - 200-yard long driveway. The chicken house was located at the beginning of the driveway closer up to the highway. It sat parallel with the driveway.
Q And when you obtained the state search warrant, did you go back and execute it the following day?
A Yes, sir, we did.
Q Would that have been October 17th of 2000?
A Yes.
Q And what did you discover or find on that day, October 17th of 2000? [Tr. 78] . . . .
Q That's somewhat in contradiction with what she told you on the 13th?
A Yes.
Q Also on the 31st of October, the Sims store was sold, wasn't it?
A Yes, it was.
Q Who owned the store prior to that time?
A Billy, Richard Brassfield.
Q Sir, I'm going to hand you what's been marked as United States Exhibit 203A, 203B, and 203C and ask if you can identify these objects.
A Yes, sir, I can.
Q Are these certified copies of the deed of trust and bill of sale for the Sims General Store?
A Yes, sir, they are.
Q And it's for a transaction that took place on October 31st of 2000?
A Yes. . . . [Tr. 83] . . . .
Q Who purchased the property at the Sims store according to this title deed, warranty deed on October 31st of the year 2000?
A Jerry Woodard and Sherry Woodard.

Q Who is Jerry Woodard?
A That's Sherry Woodard's husband.
Q That's 203A. 203B is a deed of trust for the Sims General Store. Again, who does it indicate ownership to?
A Jerry Woodard and Sherry Woodard.
Q And 203C is what we call a beneficiary deed. Who does this indicate the property is to revert to in the event of the death of Ms. Woodard and – Mr. and Mrs. Woodard?
A Jared Dale Woodard.
Q Who is Jared Dale Woodard?
A Jerry and Sherry's son.
Q ... Now on August 23rd of the year 2000, did you have another contact with Mr. Brassfield and Ms. Duckett at Mr. Brassfield's residence in McDonald County?
A Yes, we did.
Q Would that have been the same location as where you discovered the laboratory on October 16th of 2000? [Tr. 85]
A Yes.
Q Would you describe what happened on that day, August 23rd actually, 2001. I apologize. August 23rd of 2001, what happened on that day?
A Myself and Task Force Officer Mike Guinn went to Brassfield's residence to speak with him about this case and try to get his cooperation with the investigation.
Q While you were at that location did you and Officer Guinn notice anything suspicious in the front yard of Mr. Brassfield's residence?
A Yes. Right next o the driveway there was a small burn pile, and what got my attention was there was a can of starting fluid in it, and then there was a small glass jar that contained a liquid. And I inquired about it and I actually recovered the jar of that liquid from the burn pile.
Q Did you send a sample of that liquid to the laboratory for analysis?
A Yes, I did.
Q Afterwards did you ask for consent to search the property?

A After recovering the jar of liquid out of the burn pile, we asked for consent to search the residence. We were granted consent.
Q Did both Ms. Duckett and Mr. Brassfield give you consent?
A Yes. [Tr. 86]
Q Did you find anything of contraband nature inside the residence when you conducted your consent search?
A Again, in the west end of the bedroom, between the mattresses I found a plastic ink pen housing which I recognize from prior experience as being used to snort methamphetamine.
Q Did you send that to the laboratory for testing as well?
A Yes, I did.
Q Sir, I'm going to show you what's been marked as United States Exhibit 113. Are these the items that you sent to the laboratory for testing?
A The plastic ink pen, the housing, yes. The small bottle is a representative sample that the crime lab took of the original container.
Q You sent the original container to the laboratory?
A Yes.
Q And they, in the process of testing, destroyed the container and kept the sample?
A Yes.
Q But you recognize this as the bag that you sent the items in for chain of custody purposes?
A Yes, sir.
Q I want to turn your attention to the day of September 21 of 2001. On that day did you have an opportunity with another task force officer by the name of Rico Enberg to make a contact with Jody Weston? [Tr. 87]
A Yes, sir I did.
Q Would you describe what happened on that day?
A Myself and the other task force officer were driving in the area near Lonnie Weston's residence. Sherry Woodard had

spoken with me prior to that, asked me to keep an eye on that property because she suspected someone was manufacturing methamphetamine on that property. As we circled through, we saw two men and one girl walking away from the barn on Sherry's property. When they saw us – they were carrying some buckets, and when the saw us, they dropped the buckets and took off running.

Q What did you do in response?

A We exited our vehicles. I chased on of the men. The other task force officer chased Jody Weston. And the girl that was there, we told her to stay, and, surprisingly, she did.

Q Who was the girl that was there?

A Carissa Fletcher.

Q And how is Carissa Fletcher related to Ms. Woodard?

A Now she is Sherry Woodard's daughter-in-law.

Q At the time was she married to Mr. Woodard?

A No, sir.

Q That would be Jared Woodard?

A No, sir. . . . [Tr. 88] . . . .

Q Where does Mr. Snow live?

A He lives directly across the dirt road from Sherry Woodard's property.

Q So they're neighbors?

A Yes.

Q Explain on this map where the Sims store is located. . . . It's this area, the center of the map?

A Yes, pretty much.

Q So when you saw Jody Weston in September of 2001, where was he at? Which piece of property was he located?

A He was walking away from some buildings located on Sherry Woodard's property.

Q That would be the yellow shaded area?

A Yes.

Q Sir, I'm going to show you what's been marked as United States Exhibit 114, 115, 116, 117, 118 and 119 through – 19 through 28 . . . . [Tr. 91] . . . .

Q Sir, you've looked at United States Exhibits 114 through 128, is that correct?
A Yes, I have.
Q And you recognize the items depicted in these pictures?
A Yes.
Q Did you take these pictures?
A Yes I did.
Q Are these the items depicted from the search of Jody Weston or the laboratory he left behind on or about September 21 of 2001?
A Yes.
Q And do they fairly and accurately depict the condition of the property that you observed that day?
A Yes. [Tr. 92]
MR. EGGERT: At this time I move for admission of United States Exhibit 114 through 128. . . .
COURT: ... 118 through 128 are admitted –114.
Q Sir, I'm going to show you what's been marked as 114. What does that picture depict?
A Photograph of the sheds that are located on Sherry Woodard's property.
Q Where is it that you found Jody Weston and this other individual that was at that location?
A From where the photograph was taken, they would have been walking to my back. They had been coming from right here in the corner. Its kind of an L-shaped building. And on the right-hand side there's a small room, and that's the room that they had been coming from.
Q What's 115 depict?
A This is a trail leading from Sherry Woodard's property. Up the hill there and to the right would be Lonnie Weston's residence.
Q And is this the path that Mr. Jody Weston took as he was attempting to flee from you that day? [Tr. 93]
A Yes, this is the path he took when he was fleeing from the other officers.

Q Do you know what the tent is for right here at the bottom of the hill?
A No, I don't.
Q You also said that Mr. Weston, Jody Weston, smashed some containers into the creek bed?
A Yes.
Q What does 116 depict?
A This is a photograph of the creek bed. Its kind of hard to see, but the jars are – there's a piece there, and off to the left there's another piece right there in the lower left-hand corner.
Q …[Y]ou took some close-up pictures of those items as well?
A Yes.
Q 117 depicts what?
A A closer photograph of the jars that he smashed in the creek.
Q And what does 118 depict?
A Another close-up photograph of the jar that he smashed in the creek.
Q All right. What does 119 depict?
A As I mentioned, they were carrying some 5-gallon buckets. These are some of the contents of the 5-gallon buckets. [Tr. 94]
Q Would you describe the item with the tube sticking out of it, what you consider that item to be?
A That's what we mentioned earlier, what we referred to as a hydrogen chloride gas generator.
Q You see those often in methamphetamine laboratory sites?
A Yes, all the time.
Q 120?
A It's the same photograph, hydrogen chloride gas generator. Off to the side there's some jars containing some acid and then a short section of vinyl tubing.
Q 121 depicts what?
A Piece of jar that we recovered from the creek bed.
Q What does 122 depict?

A Piece of jar that we recovered from the creek bed.
Q 123 depicts what, sir?
A Short section of vinyl tubing.
Q That you were getting ready to send to the laboratory for testing?
A Yes. The plastic container in front of us is what we secured the tubing in and sent to the crime lab.
Q And 124?
A Another short section of tubing we were preparing to send to the crime lab.
Q 125? [Tr. 95]
A Jar containing a liquid substance.
Q That you found at the crime scene?
A Yes. It was recovered from the 5-gallon bucket.
Q 126?
A Another jar which we recovered from the 5-gallon bucket.
Q 127?
A Hydrogen Chloride gas generator.
Q Where did you recover this?
A From the 5-gallon bucket.
Q And 128?
A Section of vinyl tubing that we recovered from the 5-gallon bucket.
Q Sir, you had an opportunity in October of 2001 to conduct a consent search on the property of Dub Snow?
A That's correct.
Q And who is Dub Snow?
A Sherry Woodard's neighbor.
Q He lives across the road from this property that we've just looked at in these pictures?
A Yes. . . . [Tr. 96] . . . .
Q Again now, on December 6 of 2001, you had a discussion with Ms. Woodard about what she was intending to do with her store?
A Yes I did.
Q What was she planning to do with her store?

A She was planning on selling it.
Q At that time did you talk with her about her obligations concerning Missouri Revised Statute 442.606 concerning disclosing to a potential buyer activity on that property?
A Yes, I did. I explained the statute to her.
Q And what does the statute require a potential seller of property to do?
A They must disclose information that there had been methamphetamine activity occurring on that property.
Q And you described to Ms. Woodard that there was in fact [Tr. 103] methamphetamine activity taking place on the property?
A Yes, I did.
Q And how did she respond to that?
A She asked that I keep an eye on it for people trespassing and such.
Q All right. On January 17, 2002, did you execute a search warrant at the Sims store?
A Yes, I did.
Q And why was it that you executed a warrant that day on that store?
A We had originally received information from Wal-Mart from Neosho PD, Neosho Police Department, regarding someone buying a large amount of item, including a large amount of precursor items used to manufacture methamphetamine. The person that signed the Wal-Mart receipts was Sherry Woodard. We went to the store to speak with Sherry about the items that had been purchased, and Sherry asked if we would like to search the store. She walked us over to the store. As we went inside, Jared Woodard was coming from the back of the store, and we searched the store for a while and we went to the back office area When we got to the office, I smelled a strong odor of burnt marijuana and some zig-zag rolling papers laying on the desk. At that point, Sherry withdrew her consent. [Tr. 104]
Q And then what did you do?

A We stopped searching and applied for a search warrant.
Q Were you able to get a search warrant?
A Yes, we did.
Q And did you then complete the search of the store?
A Yes.
Q Now, when you searched the store, what did you discover?
A In the office area, we – we found some marijuana We had seen earlier on the desk some rolling papers, some marijuana pipes, and a small, square metal container inside of which we found a small amount of methamphetamine.
Q Sir, I'm going to show you what's been marked as United States Exhibit 146, 147, and 150, and ask if you can identify these items.
A 150 is a small amount of marijuana which was recovered from Jared Woodard's person when he was arrested. 146 is some marijuana pipes and some zig-zag rolling papers. And 147 is a small metal container inside of which we found the methamphetamine.
Q Where was that located?
A In the office are.
Q Was it in a desk in the office?
A Yes.
. . . Tr. 105] . . . .
Q You never sent this to the chemist for testing?
A No we didn't.
Q This has always been maintained in your custody and control?
A Yes.
Q 147 and 150 were sent to the laboratory for testing?
A That's correct.
MR. EGGERT: Again, I move for admission of United States Exhibit 146. . . .
COURT: 146 is admitted.
Q Where was 146 found, sir?
A In the office.
Q Where in the office exactly?

A On the desk or in the desk.
Q Was it in plain view when you walked into the office? [Tr. 106]
A I don't recall if all the pipes were but the rolling papers were, yes.
Q Okay. Did you also have an opportunity to talk with Ms. Woodard about her recent purchases from the Wal-Mart in Neosho?
A Yes, we did.
Q What did you and Ms. Woodard talk about?
A About the items that she purchased. She said that she purchased the items for resale there at Sims store.
Q And did you attempt to locate the items that she had purchased for resale at the store?
A Yes, we did.
Q And were you able to find those items?
A No, sir.
Q Specifically, what item was it that you were looking for that you were unable to find?
A Several packages of lithium batteries.
Q Do you remember how many batteries Wal-Mart indicated she had purchased?
A Three. . . .
Q Three packets?
A Yes.
Q And how many batteries in a packet? [Tr. 107]
A Presumably two, generally.
Q Were there any of those packets there at the store?
A No.
Q Did she indicate that she had sold them?
A No. I asked her where they were. She told me that she kept them underneath the cash register underneath the counter because people were stealing them. And I asked her where they were because I looked for them and the weren't there. She didn't have an explanation where they went.
Q You also conducted a thorough search of the back room?

A Yes.
Q Also you looked out in the area where the customers are at in the store?
A Yes.
Q Showing you Exhibit 201 again, the photograph of the Sims store. Is this the store that you searched in January of 2002, January 18th?
A Yes. Yes.
Q Where in the store – if you'd point to it – - is this back area where the desk was where the drug paraphernalia was located?
A You're looking at the front of the store. As you would enter the front door, you would go probably 20 or 30 feet to the back of the store, then you go up a set of steps into the storage area of the store, and then off to the left in the [Tr. 108] Northwest corner of the store would be the office area.
Q Okay, And that's where you found the drug paraphernalia?
A Yes.
Q Is that where the items area also kept in stock for the store?
A Yes, the back portion of the store.
Q Which would be right where my pen is pointing?
A Yes, pretty much.
Q Sir, did you look to see whether or not Ms. Woodard had any pseudoephedrine in the back part of the store that day?
A Yes.
Q Did you find any?
A There was none.
Q Did you also look in the front part of the store for any pseudoephedrine that the defendant may be having for sale to customers at the store?
A Yes.
Q Did you find any?
A Just some brand name stuff.
Q Did you find any of the Swan generic pseudoephedrine?
A No.

Q You found some ephedrine, but none of the Swan generic pseudoephedrine?
A That's correct.
Q Sir, on January 23rd of 2002, you had an opportunity to [Tr. 109] conduct another search at Lonnie Weston's property in McDonald County, Missouri?
A Yes.
Q Describe what happened that day that caused you to execute a search warrant at that location.
A We had went to the residence after receiving information that Jody Weston was there. At that point Jody Weston was wanted on some outstanding warrants that stemmed from the incident where we had chased him. At that time he eluded capture. We went to the residence. I went to the front door, a couple of other officers went to the back of the residence. I knocked and announced Sheriff's Department. Prior to me knocking, I heard some people talking. Immediately after I knocked, the talking stopped and there was a lot of movement within the residence. The officers that were at the back of the residence said the could hear some glassware banging together. A few minutes later, I was met at the front door by Desa White.
Q Who is Desa White?
A Jody Weston's mother; Lonnie Weston's common-law wife. . . . [Tr. 110]
Q We're at the door and Desa White greets you. What happens?
A We explained to her that we were there trying to find Jody. She denied that he was there. We asked for consent to enter the property or enter the residence to look for him. Again she denied that he was there. Again we asked, you know – we explained to her we received information that Jody was there and again asked for permission to come in and look for him. At that point, she stepped back and said "Go ahead and look. He's not here." We entered the residence. Becky Singleton and Desa White were both in the living room area I went

towards the back of the residence and in the bathroom area there was some glass dishes which had some liquid powder residue inside them [Tr. 111] As well as the floor was slippery where some had been spilled. I didn't find Jody there, so I went to the bedroom, looked in the closed, moved some clothing back, and on the floor there was a 2-liter bottle which contained some cloudy, milky-colored liquid.

Q Which room is this in?

A Lonnie Weston's bedroom.

Q Was it in the closet?

A Yes.

Q Continue.

A At that point, seeing what we had found and not finding Jody Weston, we stopped searching and applied for a search warrant.

Q Were you able to get a state search warrant?

A Yes.

Q Then you went back to the residence and completed your search?

A Yes, we did.

Q Did you take photographs of your search that day?

A Yes.

Q Sir, I'm going to show you what's been marked for identification as United States Exhibit 151 through 168 and ask if you can identify these items. Have you reviewed those items, sir?

A Yes. [Tr. 112]

Q Are those photographs that you took during the course of your search on January 23rd of 2002?

A Yes.

Q Do they fairly and accurately depict the condition of the items that you observed at that location on that day?

A Yes, they do.

MR. EGGERT: At this time I move for admission of United States Exhibit 151 through 168. . . .

COURT: . . . . Government's Exhibits 151 through 168 are admitted.
Q What's picture 151 depict?
A That's the entrance to Lonnie Weston's driveway.
Q What does picture 152 depict?
A Electric hot plate, single burner.
Q Again, as a methamphetamine laboratory investigator, what is significant to you when you see and electric hot plate in an area where you think a meth lab is located?
A We see electric hot plates commonly used primarily with the red phosphorous method as a heat source.
Q I'm going to show you what's been marked as 153. Do you recognize that area? [Tr. 113]
A Yes. It's a Radio Shack bag containing numerous lithium style batteries.
Q You had an opportunity to seize that bag and those batteries on that day?
A Yes, we did.
Q I'm going to show you what's been marked as United States Exhibit 172, ask if you can identify that object?
A It's the Radio Shack bag that's in the picture, batteries inside it.
Q And you seized it on that day?
A Yes, we did.
Q Did that bag contain the items that you seized on that day that are reflected in this picture?
A Yes.
Q How do you know that, sir?
A I packaged it and I heat sealed it.
Q Did you keep it in the evidence locker until the time it was ready for trial?
A Yes.
Q You know that because it was preserved in the box?
A Yes.
Q With your seal on it?
A Yes.

MR. EGGERT: At this time I move for admission of United States Exhibit 172. [Tr. 114] . . . .
COURT: 172 is admitted.
Q I want to show you now what's been marked as United States Exhibit 154. What does that picture depict?
A Six more lithium-style batteries.
Q Did you seize those batteries that day?
A Yes, we did.
Q I'm going to show you what's been marked as United States Exhibit 173 and ask if you can identify this object?
A Yes. This is the six lithium batteries.
Q And you placed them in that bag after you seized it?
A Yes I did.
Q Are they in the same condition as they were in at the time you seized them?
A Yes. . . .
Q Where did you seize these batteries [Tr. 115] that day?
A Lonnie Weston's bedroom.
Q And are they in the same condition as when you seized them?
A Yes, they are.
Q And how do you know that?
A Because I packaged them, I sealed them and maintained them as evidence.
MR. EGGERT: Again I move for admission of United States Exhibit 173. . . .
MR. LEWRIGHT: Mr. Weston, on 153, you were stating there was a list of – excuse me, Mr. Sutherland. On 153 you said there was a bunch of batteries that were seized from the Weston residence; is that correct?
WITNESS: Yes.
MR. LEWRIGHT: Were they found separate from those six or did you pull six of those out?
WITNESS: They were found separately.
MR. LEWRIGHT: You found the 153 bag where?
WITNESS: Also in Mr. Weston's bedroom.

MR. LEWRIGHT: In the same drawer, same bag?
WITNESS: No, it was a separate location entirely. It was within the same bedroom, just different [Tr. 116] locations. . .
COURT: 173 is admitted.
Q I'm going to show you what's been marked and admitted as United States Exhibit 155, ask if you can identify these items?
A Yes. Two Prestone starting fluid cans.
Q What's significant...about the Prestone starting fluid cans?
A They are used in the methamphetamine manufacturing process.
Q I'm going to hand you what's been marked as United States Exhibits 171 and 170 and ask if you can identify these objects?
A Yes. Those are the two cans that are in the picture.
Q Where did you seize these cans?
A I don't recall exactly where within the residence.
Q Did you write a report that reflected your recollections about that day contemporaneous to the time you seized these [Tr. 117] items?
A Yes, I did.
Q Would that report refresh your recollection as to where these items were located when you seized them?
A Yes.
Q Sir, I'm going to hand you a report that's been dated January 25th of 2002. Do you recognize that report?
A Yes, this would be my report.
Q Would that report help refresh your recollection as to where items were seized that day?
A Yes.
Q Would you please turn to the portion of the report that talks about the seizure of these two items? Then when you've reviewed that, if you could look up.
A These two cans were found inside a cardboard box on the floor long the north wall of the middle bedroom.
Q I assume the report refreshed your recollection?

A Yes.
Q These are the cans that you seized?
A Yes.
Q How do you know that?
A They've got the red stickers on the top as evidenced in the picture there.
Q Where did you keep these cans prior to trial?
A In my evidence facility. [Tr. 118]
Q How did you have them sealed?
A inside a box with evidence tape.
Q Prior to coming to court here today, we opened the box?
A Yes.
Q What was contained inside the box?
A These two cans.
Q That was what you had placed in the box when you sealed it?
A Yes.
MR. EGGERT: At this time I move for admission of United States Exhibit 170 and 171. . . .
MR. APPLEQUIST: ... [T]hose are not punctured in the bottom, are they?
WITNESS: That's correct.
MR. APPELQUIST: You testified previously that it is indicative of the use – manufacturing of meth if they've been punctured in the bottom?
WITNESS: Yes. . . . [Tr. 119] . . . .
COURT: 170 and 171 are admitted.
Q 156 depicts what, sir, picture 156?
A A bottle of Heet.
Q What's Heet used for in the manufacturing process?
A Its used to extract the pseudoephedrine and ephedrine from the cold pills during the initial manufacturing stage.
Q And did you destroy this bottle of Heet that's seized?
A Yes.
Q Why is that?

A If it was opened, we would have destroyed it in accordance with our guidelines.
Q And this had been opened?
A Yes.
Q What does 157 depict?
A Box of insulin syringes.
Q Where were those items located?
A Inside Lonnie Weston's bedroom.
Q What does 158 depict?
A It's a zippered Better Homes and Gardens nylon bag containing a Superior bottle along with numerous small Ziploc-style baggies. [Tr. 120]
Q Where was this item located?
A Lonnie Weston's bedroom.
Q ... I want to show you, sir, what's been marked as United States Exhibit 174 and ask if you can identify this object?
A Yes.
Q What is this object?
A This is the bag and the contents that are photographed.
Q And you kept this bag in your evidence lockup?
A Yes, we did.
Q You sealed it with the evidence tape?
A Yes.
Q What did you do before you came here to court today to testify?
A We opened it and I took the item out of the evidence locker.
Q Is this the same item that you seized on January 23rd, 2002, from Lonnie Weston's bedroom?
A Yes.
MR. EGGERT: At this time I move for admission of United States Exhibit 174. . . .
COURT: 174 is admitted. [Tr. 121]
Q I'm going to show you the Superior B bottle. As a meth investigator, what's significant about finding a bottle of Superior B at a location where you suspect a meth lab is?

A Its used as a cutting agent. Basically, if you have – say, just for example, if you had an ounce of methamphetamine, you could add this bottle to it and then you would have 2 ounces of methamphetamine. Its used to make the product go further when you're selling it.
Q Watering the soap down?
A Pretty much, yes.
Q And, again, the baggie here – baggies here?
A Yeah, baggies, evidence of distribution.
Q Okay. And this baggie right here with this little white powder, what was that?
A I believe it contained some powder also which we sent to the crime lab.
Q Okay. Going to show you what's been marked as 159 for evidentiary purposes. What is this object?
A Metal spoon with some residue. Inside the metal spoon is a little cotton ball.
Q Okay. Is this similar to the same type of spoons that you saw at Mr. Weston's property during the execution of the search warrant on March 23rd of 2000?
A Yes. [Tr. 122]
Q Show you what's been marked as Exhibit 179 and ask if you can identify the object?
A that's a metal spoon and inside there's also a small piece of cotton.
Q Is that the spoon that is depicted in United States Exhibit 159?
A Yes.
Q And how do you know that?
A It was packaged and sealed by me and maintained as evidence by me.
Q And it was sent to the crime lab for analysis?
A Yes it was.
Q Sir, I'm going to show you 160. What does that depict?
… This white canister right here, sir.

A I believe that's where the bag of powder was removed from.
Q Did you place those items in this jar up here?
A Yes, I did.
Q Why did you do that?
A For containment so we could send it to the crime lab for analysis.
Q Let me show you what's been marked as 175. Is this the [Tr. 123] jar that you sent to the crime lab for analysis?
A Yes, it is.
Q How do you know that?
A Its got my writing on the side.
Q Does it also have your signature and your writing on the side?
A Yes.
Q When you sent it to the crime lab, it didn't have blue tape on it?
A No, it didn't.
Q What does that signify?
A That it was sent to the crime lab.
Q What happened at the crime lab?
A They open it up and analyze it.
Q I want to show you now what's been marked as United States Exhibit 161, ask if you can identify that item?
A It's a round glass plate containing a razor blade and some powder residue.
Q Did you send that plate to the laboratory for analysis?
A Yes, we did.
Q And in addition, sir, did you prepare that jar as well for testing at the lab?
A Yes, I did.
Q I'm going to show you what's been marked as United States Exhibit 177 and ask if you can identify that object? [Tr. 124]
A This is a sample bottle that's in the photograph.
Q How do you know that, sir?

A I prepared it and its my writing on the side.
Q Thank you. What does 162 depict?
A Two-liter bottle containing what we refer to as a biphased liquid powder substance.
Q All right. And, sir, did you send that to the laboratory for analysis or a sample of that to the laboratory for analysis?
A Yes, I took a representative sample and sent a sample to the crime lab.
Q Show you what's been marked as United States Exhibit 178 and ask if you can identify this object?
A This is the representative sample that's in the photograph.
Q At the time you sent it, it was sealed?
A Yes.
Q And has the crime lab obviously been inside there and examined the items inside there?
A Yes, they were.
Q How do you know that?
A Its got the crime lab tape on it and their writing on it on the sides and on the tape also.
Q Show you what's been marked as United States Exhibit [Tr. 125] 163 and ask if you can identify this object?
A It's a sample bottle. We took the powder that's in the photograph, put it inside the sample bottle and sent it to the crime lab for analysis.
Q Like to show you what's been marked as United States Exhibit 180 and ask if you can identify that object?
A Yes. It's the sample bottle that's in the photograph.
Q And how do you know that?
A Again, its got my writing on the side, I packaged it, and I prepared it.
Q When you send these sample bottles to the laboratory, do you place them in an evidence bag?
A Yes, I place them in a large evidence bag.
Q The evidence is sealed by you?
A Yes.
Q And did you do that in this case?

A Yes.
Q I want to show you what's been marked as United States Exhibit 164. What does that item depict?
A Its one of the rectangular glass pans that we found in the bathroom that contained liquid and powder.
Q Did you prepare a sample bottle for this particular item as well?
A Yes, I did.
Q What were you actually taking out of this item for [Tr. 126] sampling purposes?
A The liquid and the powder that was in the bottom of it.
Q I want to show you what's been marked as United States Exhibit 181. Do you recognize that object?
A Yes.
Q What is that object?
A This is the sample of the liquid and the powder that was contained in the glass pan.
Q And how do you know that?
A Because I took the sample and prepared it.
Q The only difference between this photograph and this bottle is you've written the letter A next to 16?
A That's correct.
Q And why did you do that?
A The pan itself would have been item No. 16.
Q You had a separate item 16B?
A Yes.
Q ... I'm going to show you now what's been marked as United States Exhibit 165. Do you recognize this object?
A Yes. Its another glass pan that contained powder and liquid.
Q And this is 16B?
A Yes.
Q I'm going to show you what's been marked as United [Tr. 127] States Exhibit 182. What is this item?
A This would be a sample bottle containing a sample of a liquid and powder that was found in the pan.

Q Which is the item that's contained on the video screen right now?
A That's correct.
Q How do you know that's the same sample that you sent to the laboratory that's reflected in Exhibit 165?
A Again, I took the sample, I prepared it to send to the crime lab, and its got my writing on the side.
Q I'm going to show you what's been marked as 166. Do you recognize this object?
A Yes.
Q And what is this object?
A Twenty-ounce plastic pop bottle containing liquid powder.
Q And did you send a sample of this powder to the laboratory for analysis?
A Yes, I did.
Q I'm going to show you what's been marked as United States Exhibit 185. Do you recognize this object?
A Yes.
Q And what is it?
A It's a sample that I packaged, prepared to send to the crime lab. Its my writing on the side.
Q And what is it a sample of? [Tr. 128]
A The liquid powder that was contained in the bottle. . . .
Q Would it be like a sludge, maybe?
A Pretty much, yeah, sludge. White sludge.
Q You sent this to the laboratory for analysis?
A Yes, we did.
Q Okay. I want to show you what's been now marked as United States Exhibit 168. What is this object?
A Its another 20-ounce plastic bottle also containing a liquid/powder mixture.
Q Where was this item located?
A In the bathroom area.
Q Did you send a sample of this item to the laboratory for testing?
A Yes, I did.

Q I'm going to show you what's been marked as United States Exhibit 186, ask if you can identify this object?
A Yes, this is the sample bottle that I prepared. I took the sample and prepare[illegible] for analysis.
Q Is it a sample of t[illegible]ottle that's pictured in 167?
A Yes, sample of the contents.
Q Show you now what's 168, ask if you can identify that picture? [Tr. 129]
A It's a 20 ounce plastic bottle containing a liquid substance.
Q I want to show you now what's been marked as United States Exhibit 187. ... [W]hat is that object?
A It's a representative sample I took of the contents of this bottle.
Q Again, this is a sample of the bottle that's pictured in Exhibit 168?
A Yes.
Q And how do you know this is the same sample?
A I packaged it and I prepared it. I took the sample. That's my writing on the side.
Q Now, all the samples that you collected that particular day, January 23rd of 2002, how did you prepare them for delivery to the laboratory?
A We put them in a large bag and sealed the larger bag with evidence tape.
Q Okay. Then were they taken to the laboratory?
A Yes.
Q And what is the proper procedure at the laboratory if in fact the seal has been broken?
A I don't know what the crime lab procedures are.
Q Would they contact you if the seal was broken?
A Yes. [Tr. 130]
Q Now, you also indicated that you sent some items to the laboratory for fingerprint analysis?
A Yes, I did.
Q Specifically, why did you do that?
A There were visible prints on the two large rectangular pans.

Q That would be United States Exhibit 164?
A Yes.
Q And those prints are on this particular item that you saw?
A Yes.
Q And United States Exhibit 165?
A Yes.
Q So in order to take the prints – or actually to have prints analyzed at the laboratory, did you take fingerprints of the people that were at that location that day?
A Yes, we did.
Q Who was there at the house when you were conducting your search?
A Rebecca Singleton, Desa White, and Harold Talbot.
Q You took fingerprints of these individuals?
A Yes.
Q I'm going to show you what's been marked as United States Exhibit 183 and 184 and ask if you can identify these objects?
A 183 is a fingerprint card belonging to Desa White, and [Tr. 131] 184 is a fingerprint card belonging to Rebecca Singleton.
Q Are these the cards that you prepared that day for those two individuals?
A Yes.
Q Are those the cards that you sent to the crime lab for analysis on January 23rd of 2002?
A Yes.
Q Who arrived at this location while the search warrant was ongoing?
A Lonnie Weston.
Q Okay. And did you speak with Mr. Weston?
A Yes, we did.
Q What did you all talk about?
A He asked what was going on and I explained to him what we were doing.
Q Did you ask for consent to search his vehicle?

A Yes.
Q Did you find anything of interest inside of his vehicle?
A Behind the seat of his truck there were several bottles of Heet.
Q How many bottles were there?
A I believe six.
Q Did you seize those bottles that day?
A No, we didn't.
Q Why was that? [Tr. 132]
A It was January.... [A]t the time of the execution of the search warrant, Lonnie wasn't home so he was allowed to leave.
Q Okay. Now, in the bedroom of Mr. Weston's house you found this item?
A Yes.
Q Where was this located?
A In his closet.
Q And, again, this is a – describe what it is.
A Two-liter bottle of basically what we call pills breaking down, pseudoephedrine pills soaking in Heet.
Q Have you seen this type of item before in other methamphetamine laboratories?
A Every time, yes.
Q Where in the closet was this item located?
A On the floor. There was some clothing hanging up, but it was on the floor back against the wall.
Q Why do you believe that this was Mr. Weston's bedroom?
A Again, there was clothes and there was some other personal effects there.
Q Did you have an opportunity on March 14th of 2002 to execute another search warrant at the Sims General Store?
A Yes, I did. . . . [Tr. 133]
Q Did you execute a search warrant on that day at the Sims General Store?
A Yes.

Q What caused you to serve a search warrant on that day to the Sims store?
A We were seeking receipts and other documents.
Q You had received information of purchases by Ms. Woodard and you were attempting to corroborate them?
A Yes.
Q So did you execute your warrant?
A Yes, we did.
Q Did you discover some items that indicated purchases by Ms. Woodard of precursor ingredients?
A Yes, we did.
Q I'm going to show you what's been marked as United States Exhibit 194 to 199 and ask if you can identify these objects?
A Yes.
Q What are they?
A Those photocopies of the receipts that I seized from the store.
Q Actually, you seized these receipts from the store, then photocopied them?
A Yes. [Tr. 134]
Q Why did you do that?
A At the time Sherry told me that she was having her taxes done and she was concerned about getting the receipts back, so we were trying to be accommodating.
Q So you returned the originals to Ms. Woodard?
A Yes.
Q But you kept these copies for your records?
A Yes, I did.
Q Are these copies an exact duplicate of the items that you seized from Ms. Woodard on March 14th of 2002?
A Yes. I took those photocopies myself.
MR. EGGERT: At this time I move for admission of United States Exhibit 194 to 199. . . .
COURT: Exhibits 194 through 199 are admitted.

Q I want to show you now what's been marked as United States Exhibit 194. What are the items on this receipt that give you some concern as an investigator concerning controlled substance activities?
A The four individual packages of lithium batteries.
Q And, in fact, in all these other exhibits did you also [Tr. 135] notice any purchases of lithium batteries as well?
A Yes.
Q I'm going to hand you the others just to save some time. If you would indicate which exhibits I have handed to you also contain purchases of batteries and exactly how much, or any other precursors for that matter that could be used to make methamphetamine.
A You want me to read the amounts off of the items that were purchased?
Q Sure. What exhibit are you referring to?
A On Exhibit 195, Wal-Mart receipt dated January 10, it would be 12 gallons of camping fuel that were purchased. There were 17, 4-packs of Heet purchased. . . . The Heet fuel additive, they come in four packages – or packages of 4 to a pack. There were 17 of those purchased. . . .There were four packages of Equate brand sinus medicine, 36 cans of starting fluid.
Q Now you're referring to what document?
A Exhibit 196, Wal-Mart receipt dated January 17th. There's three batteries – three packages of [Tr. 136] lithium-style batteries, 8 gallons of camp fuel.
Q What document are you referring to now?
A 197, a Wal-Mart receipt dated February 1st.
Q Are these the year 2002?
A Yes. I'm sorry.
Q All right.
A Six gallons of camp fuel. 198, Exhibit 198 will be a Wal-Mart receipt dated March 5th 2002, 4 gallons of camp fuel. 199, Exhibit 199 will be a Wal-Mart receipt dated March 9th of 2002, four more gallons of camp fuel. That would be it....

Q Where the Sims store is located, sir, are there any campgrounds close by?
A Several miles north, probably 7, 8, 9 miles north of there there's Powell. Powell has two campsites – or two campgrounds.
Q You're from that area? [Tr. 137]
A Yes
Q You've been by that campsite?
A Yes.
Q How busy is it?
A Not very busy, especially in March.
Q And January and February?
A Yeah. Those time of year they're not very busy at all.
Q Sir, I'm going to show you what's been marked as United States Exhibit 200, ask if you can identify this object?
A Yes, I can.
Q And what is it?
A It's a Handi-Rak invoice that I seized from the Sims store during the search warrant executed.
Q Did you perform the same photocopy on this document that you did with the receipts from Wal-Mart?
A Yes, I did.
Q And for the same reason?
A Yes.
Q Is that document an exact photocopy of the item that you seized from Ms. Woodard?
A Yes, I took the photocopy myself.
Q Did you give the original back to her?
A Yes, I did.
MR. EGGERT: At this time I'd move for admission of United States Exhibit 200. [Tr. 138] . . . .
CQURT: 200 is admitted.
Q 200, sir, simply reflects that Ms. Woodard was purchasing items from what company?
A Yes, Handi-Rak Services, Incorporated.

Q One item that was she purchasing from that's on this particular invoice is what?
A The ephedrine card, 60 blisters.
Q And the date of this invoice?
A February 20th.
Q What's the year?
A 2002.
Q Sir, eventually this case was indicted by a grand jury?
A Yes.
Q And you were given the opport nity to go out and arrest Mr. Weston?
A That's correct.
Q Would you describe what happened as you attempted to arrest him on or about October 20th of the year 2003?
A As we were attempting to arrest him, he put up a pretty good fight.
Q Why don't you describe what happened prior to his arrest. [Tr. 139]
A Okay. Earlier that day as we arrived at a residence, Mr. Weston fled into the woods. Myself and the other officer, we arrested Rebecca Singleton at the residence and then we backed off hoping that Lonnie would come out of the woods eventually. Approximately 8:30, 9:00 that night, myself and the other officer returned to the scene and we parked probably a quarter to a half mile away and we were walking in on foot, and while doing so, we heard movement into the woods on the west side of the highway. I asked "Who's there?" and I was met by Lonnie Weston asking "Who's there?"
Q You recognized the voice as Mr. Weston's?
A Yes, I did.
Q Okay. So after you heard Mr. Weston ask "Who's there," what did you do next?
A I tried to convince him that we were there to give him a ride, trying to – basically, just a ruse so we could get him close enough to apprehend him. I reached out and grabbed

him, told him, "Sheriff's Department. You're under arrest." At that time he started swinging, tearing away at his shirt, hitting me. The other officer joined in and we were able to get – there was a fence separating us and we were able to get Lonnie over the fence, place him on the ground. During the struggle, he bit me in my right bicep, biting through two layers of shirt and breaking the skin. [Tr. 140]

Q Where did this arrest take place?

A North of Pea Ridge, Arkansas.

Q Would it have been in Benton County, Arkansas?

A Yes.

Q And you were there with the assistance of the Benton County Sheriff's Department?

A They showed up a short while later.

Q After the scuffle takes place, do you take Mr. Weston and handcuff him and place him under arrest?

A He was eventually placed in handcuffs and escorted down to the highway to wait for the officer to arrive.

Q While waiting for the Arkansas officer to arrive to take him into custody, did Mr. Weston make any statements to you?

A Yes, he did.

Q Specifically what kind of statements did he make to you?

A He told me that it wasn't over; when he gets out of prison, we'll finish it.

Q Did you ask him if that was a threat?

A Yes, I asked him if that was a threat.

Q How did he respond?

A He said, "No, that's a promise." . . . .

Q I have to go back. I apologize. I want to go back to the search of Mr. Weston's [Tr. 141] property on the 23rd of January, 2002. Go back now. I forgot to introduce a few pieces of evidence. I apologize. I'm going to show you what's been marked as United States Exhibit 169, ask if you can identify this item?

A Yes. It's a green notebook we seized out of the residence.

Q Did you seize it from the residence?
A Yes, we did.
Q Where was it located in the residence?
A In the bedroom.
Q And is this the same address book that you seized in the bedroom area on January 23rd of 2002?
A Yes.
Q This is Lonnie Weston's property?
A Yes.
MR. EGGERT: At this time I move to admit United States Exhibit 169. . . .
MR. APPLEQUIST: Did you go through the address book and look to see if there were names of suspected co-conspirators and so forth in there?
WITNESS: Yes, there were some names in there that I did recognize.
MR. APPLEQUIST: Names that you recognized? [Tr. 142]
WITNESS: As being associated with Mr. Weston and methamphetamine activity.
MR. APPLEQUIST: Any that come to mind right offhand without looking at it?
WITNESS: I know Craig Guinn's name's in there.
MR. APPLEQUIST: Anybody else?
WITNESS: Not that I can recall off the top of my head. . . .
COURT: 169 is admitted.
Q Speaking of Mr. Guinn, I'm going to show you 169. What name and address do you see reflected in the address book?
A Craig Guinn, his home address, Route 2, Box 85, Westville, and then a house number and shop phone number.
Q Did you make that mark that's through that name?
A No, I didn't.
Q Show you what's been marked as United States Exhibit 188 and ask if you can identify this?
A Yes. This is a couple of short pieces of plastic straws which are commonly used to snort methamphetamine.
Q Where was that item taken from? [Tr. 143]

A In a vehicle driven by Desa White.
Q Okay. Where was the vehicle located?
A In Lonnie Weston's driveway.
Q That was seized during the execution of the search warrant on January 23rd?
A That's correct.
Q How do you know that?
A I secured the items and I packaged them and sent them to the crime lab.
Q And you did that for the analysis of the residue on these items?
A Yes. There was obvious residue contained in the straws.
Q I'll show you what's been marked as United States Exhibit 189 and 190 and ask if you can identify these items?
A Portable two-way radios.
Q Where were those items located in the Weston residence?
A Located in Lonnie's bedroom.
Q And how do you know those are the same items that you seized that evening?
A There, again, I seized them, I secured them as evidence and put them into our evidence storage facility.
MR. EGGERT: At this time I move for admission of United States Exhibit 190 and 189. . . . [Tr. 144] . . . .
COURT: 189 and 190 are admitted.
Q I'm now going to show you what's been marked as 191 and 192 and ask if you can identify these items?
A 191 is a hand held Bearcat police frequency scanner, and 192 is a desktop Bearcat police frequency scanner.
Q Where did you find those items?
A Lonnie Weston's bedroom.
Q How do you know those are the same items that you seized from Mr. Weston's bedroom on the 23rd of January, 2002?
A ... I secured them in our evidence storage facility.
MR. EGGERT: At this time I move for admission of United States Exhibit 191 and 192. . . .

MR. APPLEQUIST: Those are not illegal to purchase or own or possess in and of themselves, are they?
WITNESS: That's correct. . . .
COURT: 191, 192 are admitted. [Tr. 145]
Q I want to show you now, sir, what's been marked as United States Exhibit 193, ask if you can identify this object?
A It's a Night Owl monocular night vision.
Q Where was that item located?
A Lonnie Weston's bedroom.
Q How do you know that's the same item that you took from Mr. Weston's bedroom on January 23rd of 2002?
A I packaged it, secured it as evidence.
MR. EGGERT: At this time I move for admission of United States Exhibit 193. . . .
MR. APPLEQUIST: Again, there's nothing illegal about this – purchasing or owning or possessing this in and of itself?
WITNESS: That's correct. . . .
COURT: 193 is admitted.
Q Let's go to Mr. Appelquist's concerns now about legality. Do you often see items such as Bearcat scanners and walkie-talkies and nightvision scopes in methamphetamine laboratories? [Tr. 146]
A Yes, sir, all the time.
Q What purpose are these items used for in a methamphetamine laboratory location?
A To keep track of the police, countersurveillance type measures.
Q What do the Bearcat scanners do?
A Monitors police frequencies, police activities, lets people involved in illegal activities know where the police are at and what the police are doing.
Q And the walkie-talkies obviously?
A For a lookout to maintain contact with, I guess, whoever they're looking out for.
Q Of course, the night vision scope can be used for what purpose?

A countersurveillance.
Q At night?
A At night.
Q Finally, sir, you were able to obtain bank records from Arvest Bank concerning the Sims General Store. I'm going to show you, sir, what's been marked as United States Exhibit 205. Is this the certificate of declaration as to business records maintained by Arvest Bank for the Sims General Store?
A Yes. . . . [Tr. 147] . . . .
Q Direct your attention once again to the computer screen. 205CC contains a series of checks. What check was written by Ms. Woodard to what individual?
A Becky Shockley.
Q Who is Becky Shockley?
A She was a one-time girlfriend of Lonnie Weston.
Q What's her other name?
A Becky Singleton, Becky Littlefield.
Q This is a check that indicates apparently payment for employment?
A Yes.
Q 205DD indicates a check written by Ms. Woodard to what individual?
A Charles Laffoon.
Q Do you know who Charles Laffoon is?
A He's a salesperson for Handi-Rak.
Q ... [A]nother check written to what individual?
A Becky Shockley, Becky Singleton, Becky Littlefield. [Tr. 149] . . . .
Q Then 205HH, you have a check that's dated on what date?
A 12/18 of '01.
Q And who is that check written to?
A Becky Shockley, Becky Singleton, Becky Littlefield.
Q Right below it there's also another check written on what day?
A 12/18 of '01.

Q Who is that written to?
A Michelle Carroll.
Q Do you know who Michelle Carroll is?
A Yes, I do.
Q Did she at one time also work at the Sims Store?
A Evidently.
Q You have no personal knowledge of that?
A No, I never saw her.
Q What about Ms. Singleton, did you ever see Ms. Singleton working at the store?
A I saw her up there a lot but I wasn't aware that she was working there.
Q Finally, sir, on the 18th of January, that's the day you executed the search warrant in the Sims store correct?
A Yes.
Q And was Ms. Carroll or Ms. Singleton there on that day when you executed the search warrant? [Tr. 151] . . . .
Q Now, Mr. Brassfield's property is over there, is that right, in Section 21?
A Yes.
Q And that's where in October of 2000 you executed the search warrant and found the very large quantities of chemicals we're talking about?
A Yes.
Q And where you allege that Mr. Weston was living, that double mobile home trailer we're talking about is over here; is that correct?
A Just to the left of where you're pointing.
Q It was – was it east or west of KK?
A It was on the west side of the road. . . .
Q And then there's a tract of land here that says Frank Snow, and that's the Dub Snow property that we're talking about?
A Yes, right in there.
Q But, again, there's no evidence that Mr. Weston owned any of this property?
A That's correct. [Tr. 159] . . .

The grand total weight of everything that you seized was somewhere around 1700 grams?
A Yes
Q And of that 1700 grams, 1100 of it – over 1100 of it was in that bucket?
A Yes.
Q Now, what was in that bucket was described, I think, as like a brownish substance. It was kind of mushy, muddy brown substance, correct?
A Yes.
Q So that the jury understands, if I were a meth user and I was looking to use some meth, that was not in consumable form, was it?
A Probably not.
Q And I couldn't take my syringe and go shoot up with what was in that bucket?
A Probably not.
Q And during the entire course of the investigation, unless I'm mistaken – I'm sure you'll correct me if I am – that was the single largest seizure of a mixture or substance containing meth that you found during the three-year period?
A Yes.
Q You hit 1100 grams in one fell swoop with Item 29 and that was the largest quantity that you found? [Tr. 175]
A Yes.
Q That was at Brassfield's place?
A That's correct.
Q And that is – that was not meth in consumable form or distributable form?
A No, it wasn't.
Q In other words, if I were a meth dealer, I wouldn't be taking out my baggies to that bucket and scooping stuff out and out on the street and selling it?
A No, you wouldn't.

Q Okay. I want to talk to you for a minute about your encounter with Jody Weston in September of 2001. Do you remember that?
A Yes, I do.
Q There was some testimony and some photographs concerning that and there was a lot of evidence introduced. And just to refresh everybody's recollection, this is the one where Jody Weston smashed some glass jars in the creek bed or something like that; is that right?
A Yes.
Q For example, Government's Exhibit 121 is a piece of glass from one of those jars that you found afterwards, correct?
A Yes.
Q Now, the point I want to make sure on this is when you were documenting this evidence seizure, you've got your case number [Tr. 176] and McDonald County and this says Jody Weston, suspect, correct?
A Yes.
Q And, in fact, if we look at - - we could look at a number of different ones of those photographs and the would - - and they would be similarly marked. For example, here's Exhibit 127. This says Jody Weston, suspect, correct?
A Correct.
Q And during that encounter you saw - - you, Jeff Sutherland, saw three people, one female, one who you recognized on sight as Jody Weston?
A That's correct.
Q And a third white male that you could not identify on sight?
A Yes.
Q Now, by the time of this encounter in September of 2001, you know what Lonnie Weston looks like?
A That's correct.
Q So you do not allege that the second white male that you saw was Lonnie Weston?
A That's correct.

Q And, in fact, you've identified him in some reports as Charlie, last name unknown. Do you remember that?
A Yes.
Q Somehow you deduced that this guy's name was Charlie, [Tr. 177]
Q Then you went back to the trailer house in January of '02?
A Yes.
Q And, again, when you arrived at the trailer house in January of '02, Lonnie was not there?
A Correct.
Q Desa White is there?
A Yes.
Q Becky Singleton is there?
A Yes.
Q Harold Talbot is there?
A Yes.
Q So three people are there and none of them is Lonnie Weston?
A Correct.
Q And, in fact - - apologize if I've got some photos mixed up, but I think these are the photos from January of '02. Exhibit 159, do you recognize that? I'll represent to you that that's from the January '02 search. Do you agree with that?
A Yes.
Q And, again, as was the case with the March 2000 search, we got a burnt spoon, don't we?
A Yes.
Q That's indicative of a needle user?
A Yes. . . . [Tr. 182] . . . .
Q And what is that?
A It's a map of McDonald County.
Q Okay. And you've seen that before; is that correct?
A Yes.
Q And, in fact, you've used that in your course of business?
A Yes.

Q All right. I'm going to have you mark, if you would, where this property is on that bigger map. Actually, this is a blow-up of this little plat map that you've been showing; is that correct?
A Yes.
Q Show me where the Woodard property is where she was living in March of 2000. Put a W over there.
A (Complies)
Q On this Exhibit you've shown where the Woodard property is, and its marked over in the right hand corner; is that correct?
A Yes.
Q And its several miles to the Sims store; is that correct?
A Yes.
Q In any case, you had a pretty good relationship with Sherry in the year 2000; is that correct? [Tr. 192]
A At that time I don't think Sherry and I were really familiar with each other.
Q Well, she had called and asked you to check on the places?
A Yes.
Q Is this the area that she was asking you to check on?
A Yes.
Q All right. And what was the purpose of her asking you to come and check on this property?
A She suspected there was people manufacturing methamphetamine on the property.
Q And you had discussions about that; is that correct?
A Yes.
Q And she didn't want to have anything to do with it?
A Yes, that's what she told me.
Q In fact - - I'm going to jump ahead - - your September of '01 arrest happened or occurred around that property; is that correct?
A Yes.
Q Do you recognize that?
A Yes.

Q Okay. Is that a shed somewhere located on her property?
A Right next to Mountain Road.
Q On or about September - - what was it, September 21st, you get a call from Sherry?
A No. We were just driving through the area [Tr. 193] . . . .
Q I'm going to show you what I've marked as 1B and ask you if you recognize that?
A Yes, I do.
Q And is that a report that you made in regards to the September 21st - -
A Yes.
Q Now, in it you discuss having talked with Sherry; is that correct?
A Yes.
Q Okay. And, in fact, you discuss having talked with Sherry before this September 21 arrest; is that correct?
A Yes.
Q She had come in and asked you "Hey, keep a watch on this place. I think people are making meth. I don't want people trespassing." Is that correct?
A That's correct.
Q Did you discuss who she thought might have been doing that?
A No, I don't recall.
Q Okay. You didn't ask - - she just wanted you to look out for anybody, no matter who it was; isn't that true?
A Yes.
Q And you did that for her? [Tr. 195]
A Yes.
Q And you continued to look for her, and the two of you would communicate back and forth if there was a problem around her property; isn't that true?
A Yes.
Q That relationship continued into December; isn't that true?
A Yes.

Q Okay. Again, she asked you to come out, she had had some more problems, keep checking on this place?
A Yes.
Q So this area where you allege you found this methamphetamine, that was a result of Sherry requesting you to come out and help; isn't that true?
A Yes.
Q All right. So up to at least December 6 of '01, you had a pretty good working relationship with her.
A Yes.
Q At this point in time she had owned the Sims General Store; is that correct?
A Yes.
Q And let's go back. Yesterday they presented some pictures of the Sims General Store. Do you recall that?
A Yes.
Q ...[T]hey weren't taken...in...2000, [Tr. 196] were they?
A No.
Q You took them in 2003 and yet stated they were fair and accurate of how it appeared back in 2000?
A Yes. . . . .
Q Let's jump back to the year 2000 when you were finding all this stuff with Brassfield. Sherry didn't own the store; is that correct?
A That's correct.
Q And it wasn't until after Sherry got involved and asked you to check on her property that you knew anything was happening over on the - - over in that direction of the county; is that correct?
A Not necessarily. I mean, we were keeping an eye on Lonnie Weston's residence also as early as March of 2000.
Q In fact, Sherry had given you permission to go onto her property that she owned any time you wanted; is that correct?
A Yes. [Tr. 197]

Q And check and make sure she wasn't doing anything wrong and anybody else in the area wasn't doing something; is that correct?
A Yes.
Q In fact, you made it clear to her that on – - if there was a lab, that it could hurt the potential sale of that property where she lived; is that correct?
A Yes, I did.
Q And she didn't want to have any of that; isn't that true?
A Yes.
Q Did she discuss her opinion of drugs at that time?
A Just that she was against it.
Q And she made that clear to even her neighbors that you've checked with; isn't that true?
A Yes. . . .
Q Now, when you said that the store appeared the same, that open sign back in October wasn't there, was it?
A On the right-hand side?
Q Yes. . . .
Q October of 2000, that wasn't there? [Tr. 198]
A No.
Q Okay. Its my understanding that the Sims General Store has been closed down for the largest extent of the year 2000; is that correct?
A It was closed down for a good length of time.
Q In fact, you searched the records and there wasn't even a merchant's license for the year 2000, was there?
A Yes.
Q So when they bought the store in October 31st or recorded November 1st, they bought basically an empty store with no merchandise; is that correct?
A Yes.
Q And immediately on buying that store they went about cleaning it up, getting it ready to go; is that correct?
A Yes.
Q Okay. And did Sherry move after that?

A Moved next to the store, yes?
Q When they bought the store, they moved from that little right-hand corner down in McDonald County up, what, 10, 12 miles up to next to the Sims store; is that correct?
A Yes.
Q And that purpose, as you found out in your experience, was so that Sherry could run back and forth and run that store?
A Yes.
Q Basically, it was a general store, a ma and pa general [Tr. 199] . . . .
Q And were they just items that people would bring in or what were they for? Was she selling them?
A They were for sale.
Q Okay. Now, in 1999 you had no reason to suspect Sherry Woodard of anything; is that correct?
A Correct.
Q Okay. And in the year 2000 you had no reason to suspect Sherry of anything, is that correct?
A That's correct.
Q All right. Now, once she bought the store and opened it up - - what was that, March of 2001?
A I don't recall the exact time.
Q Does that sound about right?
A Yes.
Q ...Even at that time you and Sherry were working together?
A Yes.
Q Okay. Trying to get rid of meth in that area; isn't that true?
A Yes.
Q And in 2001, did you go to work for the task force at that time?
A Yes. [Tr. 201]
Q When, was it January?
A January, February, something like that.
Q All right. So now you're concentrating on that?

A Yes.
Q In the past you had been looking after her property as, what, a deputy for - -
A McDonald County. . . .
Q And now you're talking with her and speaking with her to try to get rid of this meth trade; is that correct?
A Yes.
Q And that relationship went pretty good even through December 6th when you went out again; isn't that correct?
A Yes.
Q Again, she asked you to check on the place. And you told her if there's a meth lab there, you got to tell them, and she advised you, please keep looking for me?
A Yes.
Q We're not talking the Sims General Store at that time; we're talking about her property?
A Yes, down on KK Highway.
Q But you must have spoken to her at the Sims General Store; is that right? [Tr. 202]
A Yes.
Q Because she no longer lived down there; is that correct?
A Yes.
Q All right. And did she ask you to keep a lookout for her store, too?
A I don't recall her store being mentioned but it was my - - my impression she wanted me to keep an eye on her property down on KK highway.
Q Okay. And that's where certain items you had found and direct result of her asking you to do that; isn't that true?
A Yes
Q The whole relationship changed in January; isn't that true?
A Yes.
Q All right. Now, you made much about a search warrant on the Sims General Store on what day was that, January - -
A Eighteenth.

Q - - January 18th? Do you recall what time of day you came in?
A Is that when we went up to speak with her about the purchases at Wal-Mart?
Q Yes, that would be it.
A It was probably 10:00, 10:30 at night.
Q There was a light on in the general store; is that correct? [Tr. 203]
A Yes.
Q And you had already checked it and it was locked?
A Yes.
Q You didn't find Sherry there, did you?
A No. She was at her house.
Q And that's just a little ways away from the store; is that correct?
A Probably 30 yards from the house. From the store. I'm sorry.
Q All right. And that was at 10:30 at night?
A Sometime around 10:00 or 10:30.
Q Dark? In January its certainly dark?
A Yes.
Q It was you and who else?
A I believe Sergeant Carl Cosmer, McDonald County, Bud Gale, McDonald County, might have been one or two others but I don't recall.
Q This involved some legitimate purchases made at Wal-Mart?
A Yes.
Q And you're at her house with, four or five officers?
A Yes.
Q At 10:30 at night?
A Yes.
Q You knock on the door? [Tr. 204]
A Yes.
Q She was awake or do you know?
A No, she was asleep.

Q So you awakened her from her sleep?
A Yes.
Q How was she dressed?
A I don't recall. I would assume probably night clothes.
Q Okay. Did you give her time to change her clothes?
A I don't recall. I mean, if she asked, we would have.
Q Do you recall coming in and saying, "You're under arrest."?
A No.
Q Right when you came in?
A Came into the house?
Q Yes.
A I never entered the house that night.
Q You knocked on the door, she answered?
A Yes.
Q Was she cooperative with you?
A Yes.
Q Took you to the store?
A Yes. In fact, she asked if we wanted to search the store.
Q And you were making inquiry over these Wal-Mart purchases; is that correct? [Tr. 205]
A Yes.
Q And you go to the store, and did you see how many - - do you recall how many purchases were made on that day?
A No, I don't.
Q What time did you receive your call from Wal-Mart?
A ...Wal-Mart contacted the Sheriff's department, the sheriff's department contacted - or Wal-Mart contacted the Neosho Police Department who contacted the sheriff's department who contacted me. By that time, it was sometime after 9:00.
Q What was the urgency to get out there that night?
A Well, we wanted to make sure the items were still there.
Q And you went into the store; is that correct?
A Yes.
Q Was that all of you officers?

A Yes, I believe so.
Q And you said you found some marijuana on top of a drawer?
A on top of a desk.
Q How did you get into the store?
A Sherry let us in.
Q ...So she unlocked it and somebody was already in there?
A Yes.
Q Who was that?
A Jared. [Tr. 206]
Q Do you know what the store hours were on that day?
A No.
Q But in any case, it was clearly closed at 10:30 at night?
A Yes.
Q She started showing you around and then some marijuana was found. Did you accuse her son? In fact, you patted him down, didn't you, and found some marijuana in his pocket?
A Yes.
Q At that point you say, "We'll go get a search warrant."?
A Correct.
Q All right. Do you recall what time it was when the search warrant was even executed?
A It would have been a couple hours later by the time we did the paperwork, got the signatures.
Q Well, how far is it from the Sims General Store to where you go in Pineville to get a search warrant?
A Probably 20 miles; 15, 20 miles, and then to the prosecutor's house to get the search warrant signed, then to the judge's house to get the search warrant signed. . . . . [Tr. 207] . . .
Q Who is Harold Talbot?
A That's Lonnie's nephew.
Q Did he have a relationship with Michelle Carroll at that time?
A I don't know.

Q Well, you didn't know about a relationship with Michelle Carroll?
A No.
Q Rebecca Singleton was there?
A Yes.
Q And no Lonnie Weston. And you found – I think on some of these papers you was – Rebecca Singleton and Michelle Carroll, they were working in Sims General Store right at this time; isn't that true.
A Yes.
Q And the search warrant on the 17th – excuse me. The purchase on the 17th, do you know when that occurred?
A What time?
Q Yes. [Tr. 209] . . . .
Q It's still dark, you've still got everybody right there just waiting; it that correct?
A Yes.
Q You reach into a drawer and you come out with something that you felt was methamphetamine; is that correct?
A Yes, the office drawer.
Q Was it a little silver canister?
A Yes
Q In fact, Jared fessed up to it; is that correct?
A Yes.
Q You're not trying to indicate that was Sherry's in any way, are you?
A No.
Q All right. The prosecutor asked you when you searched the store on the 17th of January of '02 if Michelle Carroll or Rebecca Singleton, did you see them there. You didn't see them there, did you?
A No.
Q The only people there – because the store was locked. Only person there was Jared; is that correct?
A Yes.

Q Okay. You don't know who was running the store that afternoon, do you?
A No.
Q When those items were put back in? [Tr. 211]
A No.
Q Okay. In fact, you asked Sherry about the batteries; is that correct?
A Yes.
Q And she told you where you should find them?
A Yes.
Q And when they weren't there, she didn't know where they would have gone?
A That's correct.
Q Did you make further inquiry of her?
A She just stated that she put them underneath the counter because people kept stealing them and she had no idea where they went to, so we pretty much dropped it.
Q Did you ask her who worked there that day?
A I don't believe I did.
Q Who might have else had access to those batteries?
A No. I think we just kind of dropped it at that point.
Q The reason I say that is because on the 23rd of January, what, seven days later or six days later, you made something about six batteries being separate and apart from all these other batteries that were found?
A On this 25th search warrant?
Q On the 25th. Is that correct?
A Yes.
Q Were you trying to say that those batteries came from [Tr. 212] her?
A No. They were just found in a separate location so that's where we –
Q On that day, who was present?
A On the search warrant of the 25th?
Q Yes.
A Rebecca Singleton, Desa White, and Harold Talbot.

Q Was that the same – where was that location at?
A That was at Lonnie Weston's residence.
Q Okay. When I've been referring to the 23rd, I have been saying the 25th; is that correct?
A Yes.
Q You didn't do it in two days?
A No.
Q All right. Do you recall a conversation with her boy after she came – he came in after speaking with you and telling you that it was his methamphetamine in the drawer that was confronted – it took place in front of you, in front of another officer, I think Officer Cosmer – I could have that name wrong – Jared and Sherry, and Jared comes walking out, his head is down, he starts crying because he's admitted that those are his drugs; is that right?
A Yes.
Q Do you recall a conversation about having – he said that you told him, "Well, I'm going to take you mother to jail and [Tr. 213] she'll be raped"?
A She'll be what?
Q That she would be raped. You were going to take her to jail if he didn't fess up, she would be raped? Do you recall any kind of conversation like that?
A No. That's absurd.
Q Anyway, Jared came in, his head was down. Was he crying at that time?
A Yeah. They were all pretty upset.
Q And you were going to take him away to jail for both the marijuana and the methamphetamine found?
A Yes.
Q Okay. Now, the other items that you stated, you found the fuel on the shelves; is that correct?
A In the back room there was some.
Q They keep some on storage, some on the shelves?
A Yes.

Q The only thing that you found – or didn't find that you were looking for on that day was those batteries, and she told you where to look for them, and you just couldn't find them and you made no further inquiry; is that correct?
A That's correct.
Q After that period of time the relationship between you and Sherry changed; is that correct?
A Yes. [Tr. 214]
Q Okay. She made it clear to you she thought you were hassling her, especially her kid?
A Yes.
Q All right. And this would have been after January 17th, 18th of 2002; is that correct?
A Yes
Q Did you ever ask Sherry if she had ever supplied any pills to Lonnie Weston?
A I don't believe I ever asked her that, no.
Q Are you aware if anybody ever asked her about any of that?
A No, not to my knowledge.
Q Her involvement in all of this?
A No.
Q Now, when you found those tanks on the Dub Snow residence, you kept referring to, well, it came – it was across the street of Woodard's property; is that correct?
A Where we found the large propane – or the large anhydrous ammonia cylinder, it was just north of Sherry Woodard's property and on the opposite side of the road.
Q Now, when you're referring to that property, that's – that was done, what 10/18 of '01?
A Yes.
Q Okay. Sherry wasn't living over there, was she?
A No. [Tr. 215] . . . .
Q Also, when you discussed with Mr. Lewright the fact that Ms. Woodard's son actually admitted to the possession of the

marijuana and the methamphetamine at the residence, did he make that admission in front of his mother?
A Yes, he did.
Q So I don't understand why his mother would be upset when you would arrest a person for admitting to a crime.
A I don't either.
Q Now, there was different people present at the Lonnie Weston residence the two time you executed these search warrants in January of 2002 and in March of 2000, would that be correct?
A Yes.
Q There was not a single person that was the same person in either search warrant?
A That's correct.
Q The only constant is what between the two searches?
A Lonnie Weston's residence.
Q Okay. And, finally, surveillance undercover footage, you were asked why you didn't conduct surveillance of this location. Why don't you describe where this location is.
A It's on top of a hill. The west side of the residence is basically a cliff and at the bottom of the cliff would be a creek. . . . [Tr. 256]

EXCERPTS FROM TRIAL TESTIMONY OF RICO ENBERG:

Q And what happened on that day in relation to this particular case?
A Myself and Officer Sutherland were driving on a road in McDonald County and we came upon three individuals that were walking, carrying some items. We pulled over to talk to them and we exchanged a few words and they started running. Two of the individuals started running.
Q Now, sir, you say you have been there for how many years, Southwest Missouri Drug Task Force?
A Between two and a half, three years.

Q Was this right about the time you began working for them?
A Yes.
Q So you were new to the area?
A Yes
Q You don't know any of these people?
A No.
Q Just come to a scene and off to the races they go?
A Yes.
Q So what happens?
A I chased one individual and Officer Sutherland chased another individual.
Q Were you later able to identify the individual that you were chasing? [Tr. 265]
A Yes.
Q And who was that person?
A Jody Weston.
Q What happened?
A Jody was carrying two glass jars. He threw the glass jars down and broke them, and I continued chasing him, and we ended up – he ran up a hill. . . .
Q You say that Jody Weston was running up a hill?
A Yes.
Q This is the United States Exhibit 115. Is this a picture of the hill that you've just described?
A Yes.
Q What happened when Mr. Weston arrived at the top of the hill?
A Well, approximately halfway up the hill, when he was [Tr. 266] halfway up the hill, I was at the bottom of the hill, I looked up and seen a man standing at the top of the hill.
Q What did the man do as he was standing at the top of the hill?
A He asked, "What's going on?" He yelled out, "What's going on?" I yelled, "Police. Stop." I was – like I say, I was chasing Jody. He raised his shirt up, he had on a white T-shit,

pulled his shirt up and had reached down and pulled up a pistol.
Q Were you able to tell what kind of pistol he had in his hand?
A Dark colored semiautomatic. . . .
Q Did he ever point the weapon at you?
A No.
Q What did you do after you saw this weapon displayed by this individual?
A I pointed my weapon at him, told him to drop it. At that time Jody had reached the top of the hill and the man and Jody [Tr. 267] took off running on the other side of the hill. I discontinued chase because of the weapon.
Q In addition, there was also some items that had been smashed in the creek bed?
A Yes.
Q Did you go back and help Officer Sutherland retrieve them?
A Yes.
Q Sir, at the time you wrote your report did you know who that gentleman was that was standing on top of the hill?
A No. I did not.
Q Why were you not familiar with him at that time?
A New to the area and new to the job. I didn't know anybody at that point in time.
Q Now do you recognize that gentleman as being in court here today.
A Yes, I do.
Q Could you please identify him for the record?
A Yes. He's sitting over there.
Q Would you describe what he's wearing?
A Navy-colored suit, glasses, checkered shirt and a tie. [Witness identified Defendant Weston] [Tr. 268]
Q Sir, there were some charges filed in this case against Mr. Weston in state court?
A Yeah.

Q These charges, what happened to those charges?
A Actually, I'm not sure.
Q Okay. They were not pursued?
A Yes.
Q Was there every a weapon seized from Mr. Weston as a result of this situation?
A No.
Q In fact, you stopped chasing Mr. Weston for what reason?
A Fear. I didn't want to get shot. I figured by the time I got over the top of the hill, I'd be a target.
Q You had lost sight of them?
A Yes, I did.
Q So you went back and helped Officer Sutherland with the rest of the investigation?
A Yes.
Q Now also, sir, on January 29th of 2002, did you assist this investigation by going into the Sims General Store to make a purchase?
A Yes, I did.
Q And at that time the store was operated by what individual?
A Sherry Woodard. [Tr. 269] . . . .
Q I want to ask you a series of questions. You assisted Officer Sutherland in the arrest of Mr. Weston in October of 2003?
A Yes.
Q Where did that arrest take place?
A Excuse me?
Q Where did it take place?
A Arkansas.
Q Okay. And what happened when Officer Sutherland attempted to arrest Lonnie Weston?
A Lonnie Weston punched Officer Sutherland.
Q He punched Officer Sutherland?
A Yes.
Q What occurred at that point?

A Office Sutherland grabbed ahold of his shirt. I was coming through a ravine. I came up and assisted Officer Sutherland.
Q After Mr. Weston was taken into custody, did he make any statements to Officer Sutherland that you heard?
A Yes, he did.
Q What did he say? [Tr. 272]
A He said, "It's not over. When I get out, I'll finish it," I believe were his words.
Q What did Officer Sutherland say in response?
A He said, "Is that a threat or a promise?"
Q What did –
A Weston said it was a promise. . . . .
Q Mr. Enberg, you were also present when Craig Guinn was interviewed by Mr. Quinlan, weren't you? Do you remember that?
A Yes.
Q Thank was in July of 2002. Does that ring a bell?
A Yeah, possibly.
Q That interview was tape-recorded; do you remember that?
A I believe so.
Q Do you remember Mr. Sutherland or anyone making the statement during the course of that interview, "I'm going to enjoy slapping the cuffs on that Lonnie Weston"? Do you remember that statement?
A I don't recall. I left the interview.
Q Do you remember Mr. Sutherland or either of the other two [Tr. 273] of you saying, "Please resist," meaning they hoped that he would resist arrest?
A I don't recall.
Q You're not saying the statement wasn't made; you're saying you don't remember whether it was or not?
A Yeah.
Q You do remember that it was tape-recorded, so if we play the tape, then the tape says what it ways, right?
A Yes.

Q You did a – you typed up a report after this incident that you've described running up the hill.
A Yes.
Q I have marked as Defendant Weston's Exhibit F, as in Frank. Other than the fact that there's some highlighting marks on there, do you recognize that to be a copy of your report?
A Yes, I do.
MR. APPELQUIST: Offer Exhibit F. . . .
COURT: F is admitted.
Q In your report you identify – and so that the jury understands, you and Sutherland encounter three people before the person that you claim was Lonnie [Tr. 274] Weston?
A Yes.
Q And you've got a female subject. And you don't chase her, she stays put?
A Yes.
Q And then subject No. 2 – I'm sorry. Subject No. 1 referred to in your report who you later identify as Jody Weston?
A Yes.
Q And then a third white make who you identity in your report as Charles last name unknown?
A Yes.
Q And Sutherland chases him?
A Yes.
Q You chase Jody?
A Yes.
Q And then according to the record that you wrote back at the time that it happened, back – looks like it was September pf 2001, September 21st; is that about right?
A Yes.
Q You describe that person only as another make wearing a white T-white and blue jeans, correct?
A Yes.

Q You were unable to identify Lonnie Weston on sight back at the time? [Tr. 275]
A At that particular time, yes.
Q Now, of course, Mr. Sutherland is chasing Charlie last name unknown. Mr. Sutherland would have been able to identify Lonnie Weston on sight that night if he had been the one to see him?
A Yes.
Q Because he know who Lonnie Weston is?
A Yes
Q Okay. Then – and I don't want to make too fine a point on it, but in your report you say, "He lifted the bottom of his shirt displaying a dark-colored pistol."
A Yes.
Q Now, I may have misunderstood what you were saying on direct, but I thought you were saying that he actually physically handled the pistol?
A Had his hand on it, yes.
Q But your report doesn't reflect that?
A Well, displaying. That was my term.
Q What your report says was that he pulled up his T-shirt, displaying a handgun, period.
A Well, you could take it that way but it was – by displaying I meant by putting his hand on it.
Q But you didn't say that in your report?
A Not in those exact words, no. . . . [Tr. 276]

EXCERPTS FROM TRIAL TESTIMONY OF MICHELLE KREITEL:

Q When did Mr. Wishon introduce you to Lonnie Weston? What time of the year was it?
A It was around the end of '97, first part of '98.
Q Why did Melvin Wishon introduce you to Lonnie Weston?
A We were looking for drugs. . . .
Q Specifically what kind of drugs were you looking for?

A Methamphetamines.
Q And so Mr. Wishon took you to Lonnie Weston's residence in hopes to obtain what drug?
A Methamphetamines.
Q What happened when you arrived at Lonnie Weston's residence the first time you met him?
A We done drugs.
Q Who gave you the drugs?
A Lonnie
Q And what did you do with the drugs?
A We did them.
Q Who's we?
A Melvin, I, and Lonnie.
Q And what kind of drug was it that you got from Lonnie Weston? [Tr. 288]
A Methamphetamines.
Q When is the next time you saw Lonnie Weston after this first meeting.
A Numerous accounts.
Q Was it common for you to go over there on a daily basis after this?
A Not right away, no.
Q How long it take for you to actually develop a relationship with Mr. Weston so that you would be going over there daily?
A After he moved up on the hill behind his sister.
Q The first time you went to visit him, he was not living at the location that you eventually went to on a regular basis?
A No.
Q Describe where he was living the first time you saw him.
A He was living in a bus behind his sister's house.
Q Who is his sister?
A Sherry Woodard.
Q That's the woman over here in the turquoise outfit?
A Yes.

Q So eventually did he move to another location on Ms. Woodard's property?
A Yes, he did.
Q Okay. And where was that? [Tr. 289] . . . .
Q I want to show you what's been marked as United States Exhibit 2. Do you recognize this picture?
A Yes, I do.
Q What is this a picture of?
A This is Lonnie's house.
Q This is the house that you started going to after he moved from the school bus?
A Yes.
Q Okay. And when did he actually move to this trailer, if you remember?
A Not sure about that.
Q Would it have been after January of 1999 or before?
A It was before.
Q Now, after Mr. Weston moved to this house, did you do over to this house to purchase items from Mr. Weston?
A Yes, we did.
Q What items would you purchase from Mr. Weston at this residence?
A Methamphetamines.
Q Who would be with you when you purchased the methamphetamines?
A Melvin.
Q How much methamphetamine would you purchase on a typical buy from Lonnie Weston?
A It varied for our personal use. [Tr. 291]
Q I understand it was for your personal use. How much was it?
A At the most, up to a gram.
Q How much would you pay Mr. Weston for a gram?
A Anywhere from 75 to $100.

Q Besides yourself and Mr. Wishon, did you see any other individuals ever at Lonnie Weston's residence during this period of time?
A Yes.
Q Who were the other people that you saw at his residence?
A Numerous people. His son, his daughter.
Q Did you see anybody else at the residence buying items from Mr. Weston?
A Not hand-to-hand, no.
Q Did you ever see Mr. Weston give items to people?
A No.
Q You never saw him giving methamphetamine to other people?
A It was very discreet the way it was – it was done. He never did that in front of anybody.
Q Well, he gave methamphetamine to you?
A Right, but not in front of anybody else.
Q How about Mr. Wishon?
A Same thing.
Q He give it to him in front of you?
A Well, yeah, because we were together. [Tr. 292]
Q Now, you said Jody Weston was at the house. Did you ever see Jody Weston with any methamphetamine?
A Yes.
Q Okay. Did you ever talk to Jody Weston about where he got his methamphetamine?
A No.
Q Did you ever see Stephanie Weston with any methamphetamine?
A Yes.
Q Did you ever talk with her about where she got her methamphetamine?
A No.
Q Did you ever see either of them get methamphetamine from their father?
A No, not personally.

Q All right. What about Rebecca Singleton? Did you ever see her at the residence?
A Yes, I did.
Q Who's Rebecca Singleton?
A She was kind of Lonnie's girlfriend.
Q All right. And Desa White. Did you ever see Desa White at the residence?
A Yes.
Q Who's Desa White?
A His ex-wife, I believe. Jody and Stephanie's mom. [Tr. 293] . . . .
Q Did you get drugs from Mr. Weston on that day?
A No.
Q Did Mr. Brassfield ever sell you any drugs?
A Yes, he did.
Q How did you discover Mr. Brassfield sold methamphetamine?
A Just – I don't know, really.
Q Well, when was it that you first began purchasing methamphetamine from Mr. Brassfield?
A Shortly after we met him.
Q At the Sims store?
A Uh-huh.
Q What time of year was it that you met him?
A I don't remember.
Q Was it after January of 1999?
A Yeah.
Q Now, how much methamphetamine did you begin purchasing from Mr. Brassfield?
A Up to a gram.
Q Okay. How much did you pay him for that?
A We were more or less working it off for him.
Q What would you do to work it off for him?
A We were building fence.
Q Where were you building a fence?
A Out by the highway.

Q Was it on his property? [Tr. 296] . . . .
Q And what did you do?
A We would purchase pills or batteries.
Q When you say you would purchase pills, who would help you with that?
A Melvin.
Q Where would you do to do that?
A To Rogers.
Q How would you purchase pills for Mr. Weston?
A We would but the limit of the boxes or we would steal them.
Q How about the batteries?
A Same thing.
Q What would you do with – what kind of pills were you buying for Lonnie Weston?
A Cold pills.
Q What would you do with the cold pills after you purchased them?
A We would pop them out of the packages.
Q When you say we, who would help you with that?
A Several people.
Q Why don't you name a few of those people for us.
A Me, Melvin, Rebecca Singleton.
Q Where would you do this? [Tr. 299]
A At Lonnie's.
Q Did you ever help strip batteries?
A No.
Q After you popped the pills out, who would you give them to?
A To Lonnie. . . .
Q Did you ever go to Oklahoma to pick up any items for Mr. Weston?
A I don't know if it was for Mr. Weston or Mr. Brassfield.
Q Describe what you did for Mr. Brassfield when you went to Oklahoma.

A We went to Quapaw, Oklahoma, and brought back an ounce of red phosphorus.
Q Okay. And who went with you to Oklahoma to pick up this red phosphorus?
A Tina Wishon.
Q Who is Tina Wishon?
A She is my ex's sister.
Q Ms. Kreitel, who did you give the red phosphorus to after you picked it up in Oklahoma?
A Tina gave it to Misty.
Q Misty's last name?
A I don't know [Tr. 300] . . . .
Q When you arrived at that house, who did you arrive with?
A Melvin Wishon.
Q Why did you go to Brassfield's residence?
A It was right after my birthday and we were looking for some drugs.
Q You were going to celebrate your birthday by taking drugs?
A Right.
Q And when you arrived at this residence in October of 2000 to purchase drugs, who was there?
A Frances, Rick, Lonnie, Cody, Lance, and somebody else.
Q You have listed some names for us. Frances, would that be Frances Duckett?
A Yes.
Q She was present.
A She was.
Q Lonnie would be Lonnie Weston?
A Yes. . . .
Q -- he was present? Lance, who was Lance?
A Lance Hackett. [Tr. 303]
Q Billy is who?
A I don't know who he was.
Q Billy? . . . or Rick?
A Rick was there but there was another –

Q There was a guy name Billy as well? I apologize. So a guy name Billy, but Rick Brassfield as well was present?
A Right.
Q Cody? Who's Cody?
A Coy Guinn.
Q What's going on at the residence when you arrive there with Melvin Wishon?
A Cody and Lance are outside watching the driveway.
Q Watching the driveway?
A Yeah.
Q What were they doing watching the driveway?
A Making sure that nobody rolled up that wasn't supposed to be there.
Q That wasn't supposed to be there. Again, the driveway is depicted in United States Exhibit 1; is that correct?
A No. That would be Lonnie's driveway there.
Q ...This would be Rick Brassfield or Billy Brassfield's driveway? [Tr. 304]
A Right.
Q Now, ma'am, what were they looking out for?
A People that weren't supposed to be around.
Q Why would there be a concern about people not being – people being around? What was going on at the house when you arrived there?
A A methamphetamine cook.
Q Okay. And did you notice it because of the odor that was in the air?
A Yes.
Q Did you ask Bill Brassfield if you could purchase some methamphetamine at that time?
A Yes, we did.
Q And how did he respond?
A He said it would be a couple of hours.
Q It would be a couple of hours before what?
A Before it was ready.

Q So what did you do in order to wait to purchase this methamphetamine?
A We went back to Lonnie's.
Q Who took you back to Lonnie's residence?
A Lance dropped us off.
Q Lance Hackett?
A Yes.
Q You were at Lonnie's. If this the residence that is [Tr. 305] depicted in Picture 2?
A Yes, it is.
Q Now, what happened while you were at Lonnie's residence?
A Couple hours went by and Lonnie came sliding in the driveway.
Q And what did Lonnie tell you after he got out of his car?
A He said to make sure the house was clean, that the law just kicked in down at Rick's and that he was leaving.
Q He was out of there?
A Yeah.
Q He indicated the law did what to Rick?
A He said they just kicked in over at Rick's place.
Q Did you understand what he was telling you when he told you that?
A Yes, I did.
Q What was that?
A That Rick's place had just gotten busted.
Q So Lonnie asked you to clean his house?
A Make sure there wasn't nothing around.
Q So what do you do after that?
A We cleaned house.
Q How did you clean the house?
A We looked everywhere for any kind of drug paraphernalia
Q Did you find drug paraphernalia?
A Yes, we did. [Tr. 306]
Q What kind of drug paraphernalia did you find?
A Needles, coffee filters, hoses.

Q What did you do with the items that you found?
A We burned it.
Q Where did you burn it?
A On down the driveway.
Q Did you burn any of it in the stove?
A No.
Q This all went off another part of the property?
A Right.
Q After you cleaned the house, when was the next time you saw Lonnie Weston?
A A couple of weeks later.
Q So this was now in November of 2000?
A Yes.
Q And when you spoke the next time with Lonnie Weston, what was it concerning?
A Concerning the next – well, I had been gone for a little bit, and when I did see Lonnie again, I told him that there was police in the area.
Q Why did you think that there were police in the area when you spoke with him in November of 2000?
A It was odd that the roads were very dead, and there was a couple helicopters hanging around. . . . [Tr. 307] . . . .
Q . . . after you met Lonnie Weston again in March of 2003, what did Lonnie Weston ask you to do for him?
A He asked us to go get pills.
Q So did you assist him in getting pills to make methamphetamine?
A Yes, I did.
Q And how did you do that?
A By going from one store to another.
Q Again, what is the modus operandi or the MO involved in that process?
A To obtain pills.
Q Did you buy the pills?
A No, we didn't.
Q How did you get the pills?

A We stole them.
Q … After you steal the pills, where would you take them?
A Back to Lonnie's.
Q And what would you do when you got back to Lonnie's residence in Arkansas with the pills?
A We would pop them out of the packages.
Q You say we. Who assisted you at this time popping the [Tr. 311] pills out of the packages?
A Me, Rebecca Singleton.
Q Okay. Ms. Singleton also has names or is also called Rebecca Shockley; is that correct?
A I don't know.
Q You only know here as Becky; Becky Singleton?
A Uh-huh. . . .
Q During this period of time in March of 2003, how often did you help Lonnie Weston with his cooks?
A Quite often. . . [Tr. 312] . . . .
Q . . . In your testimony today you talked in terms of meeting Mr. Weston you said in 1997 or '98; is that correct?
A Yes, it is.
Q Okay. And then there was testimony concerning some events that you indicated that occurred back in '97 and '98; is that correct?
A Yes, it is.
Q And I think on each and every one of these occasions you talked about you always said you were like looking for methamphetamine; is that correct?
A Yes, it is.
Q I take it . . . that was your drug of choice at that time?
A It was my boyfriend's drug of choice.
Q So you weren't taking methamphetamine?
A Yes, I was. . . . [Tr. 329]

EXCERPTS FROM TRIAL TESTIMONY OF LANCE HACKETT:

Q Did you ever assist in this process?
A Yes, sir.
Q How would you assist during this time that you were getting to know Lonnie Weston with manufacturing methamphetamine?
A Sometimes I'd bring ephedrine, sometimes I'd pop the pills with them, sometimes I'd break down the ephedrine, just different stages.
Q Where did you get the pills from?
A Different stores.
Q How would you get the pills?
A Go to the store and buy them.
Q Did you sometimes shoplift the pills?
A Yes, sir.
Q After you would either purchase or shoplift the pills, what would you do with them?
A Take them to Mr. Weston's residence.
Q ... [T[hat's the residence depicted in Exhibit 2?
A Yes, sir.
Q Did you ever assist him while he was cooking methamphetamine by acting as a lookout?
A I was outside quite often, yes, sir. In some situations, yes, sir. . . . [Tr. 362] . . . .
Q This would be at least after January of 1999?
A Yes, sir.
Q ...[L]et's talk about the Sims store just for a second. When Mr. Brassfield owned the store, did you ever see Mr. Brassfield sell any pseudoephedrine out of the store?
A No, sir.
Q I'm talking about putting it on the shelves for customers.
A No, sir.
Q Do you know if he ordered pseudoephedrine?
A Yes, sir.
Q How do you know that?
A With conversation between me and Brassfield.

Q What did Mr. Brassfield tell you about what he was using the Sims General Store for?
A Not just business, but just for – he would have the pills there for meth making.
Q Using the store to obtain pseudoephedrine?
A Yeah.
Q Then he would give the pseudoephedrine to who to make the methamphetamine?
A Mr. Weston. . . . [Tr. 366] . . . .
Q I know this is difficult. We might as well just make it clear to the jury. At one point you would have considered yourself friends with these two individuals?
A Yes, sir.
Q That's why it difficult today?
A Yes, sir, it is.
Q All right. Now, you had indicated that at times you would assist in popping pills?
A Yes, sir. . . . .
Q Who would assist you when you would pop pills for Mr. Weston and Mr. Brassfield?
A Sometimes Jody, whoever was around.
Q Well, for example, you say Jody. Who else besides Jody that you ever observed popping pills to make methamphetamine?
A Becky Littlefield or Singleton, Frances Duckett.
Q Talking about Frances Duckett right here?
A Yes, sir.
Q Let me ask you. Besides yourself, did you know another individual by the name of Kevin Davis who acted a lookout?
A Sometimes, yes, sir. [Tr. 367] . . . .
Q You were an addict weren't you?
A Yes, sir.
Q Have you made steps since your relationship with Lonnie Weston to try to overcome your methamphetamine addiction?
A Yes, sir. I went to rehab April 2003.

Q And have you stopped taking methamphetamine?
A Yes, sir, I have.
Q What's your memory like because of the methamphetamine use that you had?
A Not good sometimes.
Q But you remember these instances?
A Yes, sir.
Q Why is that?
A Because I was there.
Q Sir, you were not charged in this case?
A No, sir.
Q In fact, when the police approached you, you willingly gave a statement?
A Yes, sir.
Q And it's your understanding that you will not be charged in this case?
A Yes, sir.
Q Do you know who purchased the Sims General Store from Mr. Brassfield in October of 2000? [Tr. 372]
A Yes, sir.
Q Who was that?
A Ms. Sherry Woodard. . . .
Q But you have met Mr. Quinlan and Mr. Sutherland before?
A Yes, sir.
Q In fact, one of the last questions that Mr. Eggert asked you was that they approached you and you willingly gave a statement. Do you remember that?
A Yes, sir.
Q And that was in about September of 2003. Do you remember that?
A Yes, sir. [Tr. 373] . . . .
Q Okay. Now, I think it was the last question Mr. Eggert asked, were you aware of who brought the store from Mr. Brassfield, it that correct?
A Yes, sir.

Q Now, he didn't mean by that, I don't believe, that the store in operating condition when Brassfield sold it, was it? Maybe that's convoluted.
A No, sir, I don't recall being – I don't recall that question. I'm not for sure. I can't remember.
Q Do you recall Brassfield – that Sims store has been closed for about a year when it was bought by Sherry?
A Yes, I recall somewhere in there. Yes, sir, I know. . . . .
Q Mr. Hackett, you made the statement to Mr. Quinlan in September of 2003; it that correct?
A Yes, sir. . . . [Tr. 383]

EXCERPTS FROM TRIAL TESTIMONY OF RAY EASLEY:

Q Mr. Easley, where is it that you live?
A Pea Ridge, Arkansas.
Q And what do you do for a living?
A My family owns a hardware and lumber store in that town.
Q Ace Hardware store?
A Ace Hardware.
Q Sir, have you had an opportunity to have as one of your customers an individual by the name of Lonnie Weston?
A Yes, sir.
Q And do you recognize Mr. Weston as being in the courtroom here today? [Tr. 392]
A Yes, sir.
Q Would you please identify him for the record?
A He's right over there with the glasses, blue jacket. [Witness identified Defendant Weston]
Q Mr. Easley, in the years 2000, 2001, and 2002, did Mr. Weston come into your store to purchase chemicals?
A Yes. He's been a customer for many years.
Q What kind of chemicals does Mr. Weston com in to purchase at your store?
A Coleman fuel, muriatic acid, things like that.

Q Is that a pretty regular – is he a pretty regular customer for these items?
A Yes, but sporadic. Regular at times then don't see him for a while.
Q In addition to the muriatic acid or the Coleman fuel, did Mr. Weston purchase any other items at you store such as tubing?
A Yes, sir.
Q Describe what kind of tubing he would purchase.
A We sell plastic tubing. We have it on rolls, various sizes, and we just sell it by the foot.
Q Would he purchase these items in conjunction with each [Tr. 393]

EXCERPTS FROM TRIAL TESTIMONY OF KEVIN DAVIS:

Q After August of 2000 did you have any opportunity to actually move in with Lonnie Weston?
A Yeah.
Q I'm going to show you what's been marked as United States Exhibit 2. This looks like Mr. Weston's trailer?
A Yes, sir.
Q An is that where you moved in with him?
A Yeah.
Q What happened after you moved in with Lonnie Weston at his trailer?
A Done a lot of dope, and I went and got some pills to make some more stuff.
Q When you say you went to get some pills, who asked you to get the pills?
A I asked him if I could go get them and he's do it for half.
Q What do you mean by that?
A That I would get half the amount that was cooked.
Q So in exchange for you getting the pills, you were asking him to give you half the amount of the drug that was cooked?

A Yeah.
Q And what did Mr. Weston say to this? [Tr. 401]
A He agreed with it.
Q How often did you do this?
A We didn't do it but 10 or 15 time at the most.
Q Where would you go get these pills to conduct these cooks?
A Various places.
Q Well, describe some of these places.
A Wal-Mart, little stores, convenience stores might have them. I'd go in and just get one at a time.
Q How would you pay for the pills?
A Cash.
Q Would you ever steal pills?
A No.
Q You just paid for them?
A Uh-huh.
Q Now, what would you do with the pills after you obtained them from Wal-Mart?
A I would take them out to Lonnie's and put them up until it was time to cook them up.
Q Okay. And would you ever assist in popping the pills out of the blister packs?
A Yes.
Q Did you do anything else to assist in the preparation of the methamphetamine?
A Soaked them. [Tr. 402] . . . .
Q When you did see them together, what were they doing.
A Talking.
Q What did they talk about?
A I don't really know on that. Never was close enough to them while they were talking. They kept everything private.
Q Did you ever do to Mr. Brassfield's residence to assist him in any activity?
A I watched for him.
Q Watched for him while he did what?

A Cooked some up once
Q What do you mean, cooked some up?
A Some dope.
Q How do you know he was cooking up dope that time that you watched out for him?
A I was asked to watch.
Q Who asked you?
A Brassfield.
Q You know Sherry Woodard. How do you know Sherry Woodard?
A She owns the store up there.
Q The Sims store?
A Used to.
Q Did she own it after Mr. Brassfield owned it
A Yeah. She bought it from him, I believe. . . . [Tr. 404] . . .
Q Why were you going to cook some up by yourself?
A So I'd have all the profit.
Q Now, when you and Mr. Weston would cook methamphetamine, who would be responsible for getting the anhydrous ammonia?
A I never did have any then.
Q Who brought it?
A He did.
Q What about the pseudoephedrine pills.
A That was me that got them.
Q And what about the lithium batteries that you would get the lithium out of?
A Most always me.
Q Now, the cooks that you actually were personally present at, would you estimate – how much would you estimate was actually produces during those cooks? How much meth did he make?
A Fourteen grams is the most – was the most that was given to me, I believe is what it was.
Q That was given to you?
A Yeah.

Q And you were given half of the cooks?
A Yeah.
Q Did it range – what was the lowest amount that you ever got at one time?
A I think it was 3 grams, 3 ½. [Tr. 406]
Q How much profit would you have expected to get out of that if you had gone forward?
A Total amount of whatever amount of ephedrine I used.
Q Can you give us a dollar estimate of what you would have expected to get?
A I used $3 worth of ephedrine, I would have gained $400.
Q Thirty dollar of ephedrine, $400.
A Three dollars.
Q I beg your pardon. Let's back up. If you had $3 of ephedrine, you could expect $400 worth of meth sales?
A Yes.
Q So we're talking about a factor of more than 100 to 1; $3 worth of ephedrine, $400.
A Yeah.
Q Hundred times three would be 300, so more that 100 to 1. And believe me, I'm terrible at math. Do you agree with me that that would be more than 100 to 1 profit margin?
A Yeah, as far as profit on the pills.
Q So extraordinarily profitable business –
A Yeah.
Q -- for the guy who's doing it, getting the profit?
A Yes. . . . [Tr. 413]

EXCERPTS FROM TRIAL TESTIMONY OF CRAIG GUINN:

Q When did you first meet Lonnie Weston?
A In 1998.
Q How did you meet Lonnie Weston?
A I was friends with his girlfriend, Becky Singleton. . . .

Q Do you know her by any other names besides Ms. Singleton?
A Littlefield.
Q Okay. Did Ms. Singleton, or Ms. Littlefield, at any time ever work for Ms. Woodard at Sims General Store?
A Yes, I have seen her.
Q ...[I]nitially when you met Mr. Weston, ... you didn't purchase anything from him at first, did you?
A No, sir.
Q When was it that you first actually had an opportunity to purchase or engage in methamphetamine manufacturing activity with Mr. Weston?
A Him and Becky would come down to my house in Wentzville, Oklahoma, and we'd do methamphetamine.... [Tr. 424] . . . .
Q Did Mr. Weston suggest that you do this for him?
A Right. He told me that if I'd help him go get the anhydrous ammonia that he would give me some methamphetamine.
Q So how did you help him get the anhydrous ammonia?
A We would go to Granby, Missouri, and get it out of the 1000-gallon tanks, put it in butane tanks.
Q How would you put it in these butane tanks?
A With a hose that hooks onto the big tank and it just pressure pushes it in there.
Q You were with him when this took place.
A Yes.
Q How often did this occur?
A Maybe once or twice a month.
Q How big were the tanks, usually?
A Five-gallon.
Q How else did you assist Mr. Weston during this time?
A He'd go to the woods to cook methamphetamine and I would go and help him, watch and help.
Q How would you help him cook the methamphetamine in the woods?

A I would help put the anhydrous into the used stainless steel container. [Tr. 426]
Q You put the anhydrous in a stainless steel container:
A Right.
Q What would he then do with it?
A Put lithium strips in it and make it react to methamphetamine.
Q You actually saw him do this?
A Yes, sir.
Q Now, where did you get the lithium from?
A He would just gather it up.
Q Did you ever help him get the lithium?
A No, I haven't.
Q You helped him with the anhydrous?
A Right.
Q How often did this take place?
A Once or twice a week.
Q For how long of a period of time?
A From four to five months, six months.
Q This began approximately in August 2001?
A 2001.
Q So from August of 2001 until the end of the year, what were you doing with Mr. Weston?
A Making methamphetamine.
Q Once or twice a week. How much methamphetamine would you estimate you made every time you cooked it?
A An ounce to 2 ounces. [Tr. 427] . . . .
Q Did you ever act as a lookout while methamphetamine cooks were taking place?
A Yes, sir, I have.
Q And do you recognize – that's United States Exhibit 1 – what that picture depicts?
A That's look out Lonnie Weston's driveway.
Q When you would act as a lookout along his driveway, where would you be, usually?
A Up by the road.

Q Which way are we facing when we look at that picture?
A It's facing the road.
Q Facing the road. So you'd be standing right about where this picture was taken to see –
A No. No. On the other end of the road. House is back here.
Q Okay. Why would you act as a lookout?
A To make sure no one was coming.
Q Besides the ammonia, did you assist Mr. Weston in getting any other precursors that could be used to make methamphetamine?
A Yes, I have.
Q And what would you do to help him get – what other precursor did you help him get?
A Get – I went to Sims store.
Q To get what? [Tr. 429]
A Pseudoephedrine pills.
Q I'm going to show you what's been introduced into evidence as 201B. Do you recognize what that picture depicts?
A Yes. That's Sims store.
Q Is that where you would go to help Mr. Weston pick up pills?
A Yes.
Q How many times did you go to the Sims store with Mr. Weston to pick up pills?
A Twice.
Q Did you go with another person on a third occasion?
A Becky Singleton.
Q Let's talk about the two times you went with Mr. Weston. What happened the first time you went with Mr. Weston to the Sims General Store?
A I sat in the car out by the loading dock and he went into the store and came out of the door at the loading dock.
Q What did he come out with?
A Cardboard box.
Q What was in the cardboard box?

A Swan's pseudoephedrine tablets.
Q How much?
A A lot.
Q Was it a big box?
A Big box, yes. [Tr. 430]
Q Where is the loading dock on this picture that you saw Mr. Weston exit from?
A Be on back.
Q Back behind this part of the picture?
A Right. Yes.
Q What did you do with the pseudoephedrine that he removed from the loading dock that day at the Sims General Store?
A We went to his house and popped them out of the packages.
Q What would you do with the pills after you popped them out of the packages?
A We would grind them up.
Q Were you present when that took place?
A Yes.
Q What happened with the pills after you ground them up?
A He would make methamphetamine.
Q ...[A]nd this took place sometime after August of 2001?
A Yes.
Q And then it was a subsequent time after this when you went back to the store with Mr. Weston?
A Yes.
Q Describe what happed the second time you went to the store with Mr. Weston.
A I went in with Lonnie. He went over and talked to Sherry, then we went into the back room, and she said that [Tr. 431] they was over there, and there was a cardboard box on top of another cardboard box. She said, "It's underneath the other cardboard box." He reached down and picked it up. We went and put them in the car and left.
Q Is that Sherry Woodard that you're talking about?

A Sherry Woodard, yes.
Q And what was in the cardboard box that she indicated to Mr. Weston was over there?
A Swan's pseudoephedrine pills.
Q How many?
A A lot. Cardboard box.
Q And, sir, what happened to those pseudoephedrine pills that you took out of the –
A We'd take them to his house and pop them out of the container and grind them up.
Q After you popped them out and ground them up, what did you do with them?
A Make methamphetamine.
Q Were these the same type of pills – or the same brand of pills as had been purchased by Mr. Weston that earlier time?
A Yes.
Q Had you ever seen Mr. Weston on other occasions bring Swan's pseudoephedrine pills to laboratory cooks that you were helping him with?
A Once he brought – the first time that he – he told me [Tr. 432] it was the first that he'd got them from the store, he come over to my parents house. And there's a dump back on the back side of my parents' house, and we popped them out back there.
Q All right. And those were the same type of pills that you saw on those two other occasions that came out of the Sims store?
A Yes.
Q Let's talk about the third time you went to the Sims store. Who did you go with on that third occasion?
A Becky Singleton.
Q That's also Becky Littlefield?
A Yes.
Q Also known as Becky Shockley?
A Yes.

Q And what happened on – why did you go with her on this third occasion to the store?
A Lonnie told her to go up and get the pills, and Becky just asked me if I wanted to go.
Q What did you say?
A I said yes.
Q What happened when you got to the store?
A We went in, she talked to Sherry for a minute, and then we went in the room and Sherry told her they was right over there, and we went out through the loading dock again.
Q Who picked up the pills? [Tr. 433]
A Becky did.
Q You were present when you saw her do that?
A Yes.
Q And then where did you take the pills after you picked them up?
A Back to Lonnie's house.
Q Were you present when they were popped out of the blister packs?
A Yes.
Q Did you assist in that process?
A Yes.
Q What happened to the pills after they were popped out of their blister packs?
A Made methamphetamine.
Q You were present when that took place?
A Yes.
Q Did Lonnie Weston ever talk to you about why he was getting pills at the Sims General Store from Sherry Woodard?
A He said that he paid her twice the price for them.
Q Now, on the two times you actually observed the transactions, you had an eyewitness view of the transactions. Did you see any money exchanging hands between Sherry Woodard and Lonnie Weston or Sherry Woodard and Becky Singleton?
A No. Not at the time, no.

Q Was there a later time when you saw Mr. Weston give [Tr. 434] Ms. Woodard a large amount of money?
A We went in to eat breakfast one morning and I seen Lonnie hand her a roll of money.
Q Do you know how much it was?
A I don't know how much it was. It was a pretty good size roll.
Q When did you stop associating with this group?
A First part of 2002.
Q Why is that?
A Me and Lonnie got into it over Becky. They was fighting and he was hitting around on her.
Q Without any more detail, Mr. Weston and Ms. Singleton were having some problems?
A Right.
Q And you were friends with Ms. Singleton?
A Yes.
Q So based on that incident, you decided you didn't want to have anything to do with Lonnie Weston any more?
A Yes.
Q Where were you getting you methamphetamine after that?
A I would make it.
Q Who taught you how to make methamphetamine?
A Lonnie Weston.
Q When did you stop using methamphetamine?
A June 14th of 2002. [Tr. 435] . . . .
Q You discussed, for example, an instance in which you say that Lonnie handed Sherry a wad of money. Do you remember that?
A Yes.
Q And now here this afternoon you didn't remember the details of how much money was involved, but back in July of 2002, you told the officers, "The wad was folded in half, approximately a half to three-quarters of an inch thick." Do you remember that?
A Yes, sir.

Q And it says, "Guinn estimated to be approximately $500 [Tr. 440] but was unsure." Does that sound right?
A Yes.
Q Then you said, "Weston had no job but always seemed to have money." Is that what you told him?
A Yes.
Q Okay. Now, you weren't involved in any of this – you weren't personally involved in any of these activities that are on trial here until about August 2001; is that correct?
A Yes.
Q So with respect to anything that went on, say, from January of 1999 to August of 2001, you wouldn't have had any personal involvement in that?
A No, sir.
Q And then you – when was it that you stopped having involvement? It was August 2001 until like the spring of 2002?
A No, no. It was February of 2002.
Q Throughout the spring. But it was February. So we're talking about period of, by your recollection, six or seven months; is that right?
A Yes.
Q Okay, Now – and, in fact, in direct examination you said how long was it and you said four or five, six months beginning August of '01. Do you remember that?
A Yes. [Tr. 441] . . . .
Q . . . . Now, let's direct our attention back to August of 2001; is that correct?
A Yes.
Q That's when you first got to doing things with Lonnie; is [Tr. 445] that what your statement is here today?
A Yes
Q Okay. And what period of time did you first go to the Sims General Store, do you recall?
A I think it was probably September or October.
Q September or October?

A Yes.
Q Do you know?
A Not – I'm not for sure.
Q Were the leaves still on the trees?
A I can't remember.
Q Was it before hunting?
A I'm not for sure, sir.
Q Okay. You said you had had time to reflect and the original statement you said you didn't have time to reflect, but since then you've had time to reflect and you can think of different things that you hadn't thought of before?
A Yes.
Q Can you think of when you say you went in the Sims – or went to the Sims General Store?
A I said September or October.
Q And you can't pin it down any more than that?
A I don't know the exact date, no sir.
Q Was that the first, second, or third time?
A It would have been the first time. [Tr. 446]. . .
Q And when would you have gone the second time?
A I'm not for sure about the dates, sir.
Q Okay. Estimate. Would it have been the next day?
A No.
Q Next week?
A Couple weeks, three weeks, a month, maybe.
Q Over what period of time did those three alleged incidents take place?
A Two to three months.
Q So was it snowing on the last one?
A I think it was cold, yes.
Q Well, let's talk about it. In July 9 of 2002, some officers -- Officer Quinlan here, Mr. Sutherland … they came down and talked with you; is that correct?
A Yes.
Q … [T]hat wasn't the first time they talked with you?
A I talked to them twice. . . . [Tr. 447] . . . .

Q So on July 9th you still had the hopes if you would give them whatever they wanted to hear, you would get out of jail?
A Yes.
Q Okay. And at that time you stated when you went to the Sims store with Lonnie Weston that you didn't go in?
A Once. . . .
Q I direct your attention to paragraph – what is it – 5. Can you read that?
A Yes.
Q In that you stated Lonnie Weston on – "He witnessed Lonnie Weston on several different occasions obtain large quantity of cold tablets from the Sims store located at the junction of 90 Highway and East Highway in McDonald County. Guinn stated that Weston would go in the store and return through the loading docks and throw them into the back seat of the vehicle."
A Yes, it's wrote down wrong.
Q Okay. So it was memorialized wrong by – by the task force officer; is that what you're saying?
A I'm sure that I said that I went in the store one time.
Q Now, you did, because they made specific mention on it that – on Paragraph 6 you went in with Becky Singleton; is that correct? [Tr. 450]
A Yes.
Q Was Becky working there at that time?
A I'm not for sure if she was working there at that time or not.
Q Did you have a romantic relationship with Becky?
A No, sir.
Q Had you grown up with Becky?
A We had known each other for a long time, yes.
Q And on that occasion you said that you went in with her and Becky picked up some ephedrine and went out through the – went to the back room; is that correct?
A Yes.

Q All right. And, in fact, in July 9th of 2002, when reflecting on something that happened sometime in 2001, you recalled an occasion one time of going in the store with Becky Singleton; is that correct?
A Yes.
Q All right. You never mentioned anything to the other officers about going in with Lonnie; is that correct?
A No, I did.
Q Now, also in this report today you say, well, Lonnie says I'm paying her – what was it – twice the amount for pills; is that correct?
A Yes.
Q Okay. When did you finally recall that? [Tr. 451]
A I don't know when I told them that but I knew that all the time. He told me that the first time they come over to my parents' house. He was excited about getting them and he said that he was having to pay twice the amount..
Q You never told that to any police in June or July?
A I can't remember telling them that. . . .
Q It wasn't until they made this proffer: You testify for us, we'll get you a downward departure?
A No, that's not right.
Q When your probation was finally revoked, that was for this prior meth charge?
A Yes.
Q Okay. What was the reason that you were revoked?
A Absconded and dirty urines.
Q Dirty urines, absconded. It had nothing to do with that May of 2002 lab they found?
A No, sir.
Q Did you ever get prosecuted on that?
A No, sir. It was just anhydrous ammonia tanks. . . . [Tr. 452]

EXCERPTS FROM TRIAL TESTIMONY OF CHARLES LAFOON:

Q Mr. Laffoon, at one time you worked for a company called Handi-Rak Distributors in Brookline, Missouri?
A Yes, I did.
Q As part of your job as a sales person for Handi-Rak, you had a route, basically, which you supplied convenience stores with various items they may need for resale?
A Yes.
Q Was one of your customers the Sims General Store?
A Yes.
Q And at the time you were dealing with the store, who owned and operated the store, to the best of your knowledge and belief?
A Sherry Woodard.
Q Sir, I'm going to hand you what's been marked as United States Exhibit 208 and ask if you can identify the documents contained in this folder?
A Yes. They're all invoices from Handi-Rak.
Q Are these the invoices that you had prepared for you dealings with the Sims General Store from June of 2001 to June of 2002?
A Yes. . . . [Tr. 455] . . . .
Q Sir, I want to hand you this folder. This folder contains within it various records that you prepared as part of you work with Ms. Woodard when you sold your items at the Sims Store?
A Yes.
Q Can you tell us the very first transaction that you had with her according to these documents that you processed? What date was it?
A This was on the 6/27, 2001.
Q All right. We've had that actually marked as another exhibit. That's United Stated Exhibit 208A. And, actually,

several months later she actually paid for the items she ordered in this transaction?
A Yes.
Q I want to hand you what's been marked as United States Exhibit 205A, which is an exact copy from Ms. Woodard's checking account. Does this check correspond with this transaction?
A Yes, it does, check number and all.
MR. EGGERT: Move for admission of 205A and 208A. . . .
COURT: 208A is admitted. . . . . [Tr. 458] . . . .
Q Initially, Mr. Laffoon, did Ms. Woodard purchase any pseudoephedrine products from you?
A Not when I first started calling on her.
Q In fact, it was several months after you started servicing Ms. Woodard's store that she asked you for some?
A The generic Actifed, yes.
Q When I say Sudafed, you understand it was generic Actifed?
A Yeah.
Q ...[W]hat illegal item generic Actifed can you used to make?...
A Methamphetamine.
Q I'm going to show you what has already been submitted as United States Exhibit 208F and ask if you can identify this item?
A Yes. It's an invoice from Handi-Rak that I delivered and I signed as paid.
Q Does this indicate a sale of generic pseudoephedrine to Ms. Woodard's store?
A Yes.
Q Okay. What date is this?
A Delivery date was 8/8/01.
Q I'm going to hand you 205F. Do you recognize that check?... [Tr. 460]
A It would match up to this. This is not the one before this one? Okay. Okay. Yes.

Q This check corresponds with this particular payment?
A Yeah, after I wrote the credit.
Q There was actually an item that you had to return for credit back to her on this invoice?
A Yes.
Q But that was not the pseudoephedrine?
A No.
Q ... The second item on this invoice, what is it?
A Swan's generic Actifed.
Q .... What is that second item? What is it?
A It's a generic cold –
Q Pseudoephedrine?
A Pseudoephedrine in it, yes.
Q And this is when you first started providing pseudoephedrine to Ms. Woodard?
A Yes.
Q What did Ms. Woodard ask you to do after this point in [Tr. 461] August of 2001 in regards to generic pseudoephedrine?
A She asked me to bring her the maximum that I could of that product every week, every delivery date.
Q Now, this store, where was it located again? Was it in a rural part –
A Out in the country, rural country. It was at a place called Sims, I reckon.
Q In fact, 201A, is that a picture of the store?
A Yes.
Q There wasn't a town or village anywhere close to it?
A No.
Q So the next week you go back to Sims Store – and this is 208G – what do you deliver to her the next week?
A It was 48 of the Swan's generic Actifed.
Q It say Actifed tab 24. That symbolizes 24 pills to a box.
A Twenty-four pills to a package and 48 packages.
Q So you delivered her 48 packages of 24 pills in each package?

A Yes.
Q And, again, I'm going to show you what's been marked as 208G. Does this check correspond with this transaction? I show you the check number. What is that check number?
A I can't see on the invoice what –
Q I'm asking what the check number is on the check. [Tr. 462]
A 2534.
Q What does the check number on the invoice indicate?
A 2534.
Q I'm going to place on the screen now what's been marked as 208H, ask if you can identify this invoice. Is this an invoice that you had prepared for the Sims Store?
A Yes.
Q And, again, where is the pseudoephedrine item indicated on this invoice?
A It says there's 48 of the 24 count.
Q And this transaction takes place, according to your signed – this is your signature on the bottom, isn't it?
A 8/22, yes. 8/22/01.
Q And the transaction for the previous exhibit which was 208G, when did that transaction take place?. . .
A 8/15/01.
Q So a week later you go back to the Sims store, and what is it that you supply to Ms. Woodard on that day?
A Forty-eight packages of 24 tables of Swan's generic Actifed, pseudoephedrine product.
Q And the check number that indicates payment in this case?
A Yes.
Q What is that number, sir? [Tr. 463]
A 2556
Q I'm going to show you what's been marked as 205H. Do you recognize this item?
A Check No. 2556.

Q This time the signature is a little bit different, isn't it? Do you recognize this signature? It's not Sherry's signature, is it?
A No, it is not.
Q But it's written on the same account as the previous checks?
A Yes.
Q I'm going to show you now what's been marked at 208I. I'll ask if you can identify this item? Is this an invoice?
A Yes.
Q And it's to the Sims store?
A Yes.
Q This a week after the previous invoice. This is – let me show you at the bottom here.
A 8/29/01, yes.
Q Again, a week later how much generic Actifed does Ms. Woodard order from you and you deliver?
A Forty-eight of the 24-tablet.
Q Now, the 48 number is significant, isn't it, sir, because that's the limit that you can sell at that particular time to her? [Tr. 464]
A Yes, that was –
Q Based on your company's rule?
A My company's –
Q So she was ordering the limit now for three weeks in a row?
A Yes.
Q And this time she pays in what way, according to you statement here?
A 8/29/01.
Q How did she pay?
A She paid cash.
Q Now, the very same day Ms. Woodard makes another purchase. This is an invoice that marked as 208J. Do you recognize the invoice here?
A Yes.

Q And what's it for?
A It's for 48 of the 48-tablet.
Q And it's the same day as the previous transaction?
A Yes.
Q So on the same day Ms. Woodard purchases what? Forty-eight boxes of what kind of pseudoephedrine?
A Forty-eight, 48-count tablets and 48, 24-count tablets.
Q The 48-count tablets are the exact same as the 24-count tablets except there's twice as many; is that right?
A Yes [Tr. 465]
Q Why do you deliver on the same day basically almost twice as much as you had delivered before? Who asked you to do that?
A I don't know if – I don't think I ordered that – both of those. I may have. But they – we had only the 24-count tablets and then they had come out with the 48-count tablets. And to the best I can remember, I had written up for the 48 of the 24-count and then it must have been called in for the 48 of the 48-count.
Q In any even, you delivered this 48-count delivery – 48 boxes of the 48-count pseudoephedrine?
A Right.
Q Does Ms. Woodard say, "Oh, no, I don't want that"?
A No.
Q She takes it?
A Right. . . . . [Tr. 466] . . . .
Q Mr. Laffoon, as we were talking yesterday, you were discussing your sales to the Handi-Rak store. We were on the August 29th transaction. On that transaction, August 29th of the year 2001, on that transaction Ms. Woodard orders a different type of pseudoephedrine that she had ordered before. What was that?
A It's 48-count tablet rather than 24-count.
Q As you explained yesterday, the difference between the 48-count and the 24-count tablet is what?
A Just the amount that's in the package, amount of tablets.

Q And this transaction took place on the 29th of August of 2001?
A Yes.
Q Now, the next transaction that you had where you sold pseudoephedrine to Ms. Woodard was on the 9th – excuse me, on the 12th of September ... 2001; is that correct?
A Yes.
Q Okay. And this is to the Sims General Store; is that right?
A Yes.
Q Tell the jury how much pseudoephedrine you sold to Ms. Woodard on that day?
A Forty-eight of 48's and 48 of the 24 tablet. [Tr. 475]
Q So she's now ordering the maximum she can of both types of generic pseudoephedrine that you can sell?
A Yes. . . .
MR. EGGERT: . . . . It's Exhibit 208K. . . .
Q (By Mr. Eggert) At the bottom, sir, what's the check number that indicates payment?
A 2619.
Q That's your – those are your initials at the bottom of that invoice, aren't they?
A Yes.
Q Show you what's been marked as 205K. Do you recognize this object?
A It is a check signed by Sherry Woodard for the amount of that ticket.
Q In fact, the number – read the number out for me on 205K.
A 2619.
Q It the same as the check number indicated on 208K?
A Yes.
Q The next transaction you have with Ms. Woodard is a week later on the 19th of September. You indicate again it's to Sims General Store; is that right?
A Yes. [Tr. 476]
Q Would you tell us how much generic pseudoephedrine you sold her on that day?

A Forty-eight of the 24 tablet.
Q The very maximum that you could sell on that day?
A Yes.
Q Of that particular brand?
A Yes.
Q That's a week after she had already bought the maximum of two types of generic pseudoephedrine?
A Yes.
Q How does she indicate payment of this day?
A Check 2640.
Q I want to show you now what's been marked at 205L. What does that check depict?
A That's check No. 2640.
Q Is that for the payment of the item that you just referred to as 208L?
A Yes.
Q The next transaction occurs a week later on the 26th; is that correct?
A Yes.
Q What month is that, again?
A That's 9/26/01.
Q This is to what store?
A Sims General Store. [Tr. 477]
Q And how much generic pseudoephedrine does Ms. Woodard order on that day?
A Thirty of the 48 tablet.
Q Let me ask you this, sir. What was the standing order that Ms. Woodard had with your company concerning the ordering of pseudoephedrine?
A Just all that I could bring. I mean, all that I could order or get from the warehouse.
Q There are some weeks where you don't sell her some pseudoephedrine?
A That's right.
Q And this particular incident you actually weren't able to sell her the entire maximum amount?

A That was probably because that was all they had in the warehouse.
Q You were limited by your inventory at the company's warehouse in Brookline?
A I'm sure I probably ordered 48 but 30 is all they sent; probably all they had.
Q So there were times during your relationship with Ms. Woodard's store where you couldn't sell her the maximum because you didn't have any more to sell?
A Didn't have it.
Q This indicates a payment by Check No. 2666; is that correct? [Tr. 478]
A Yes.
Q Show you, sir, what's been marked as 205M. Do you recognize that object?
A That's Check No. 2666.
Q Yes.
A In the amount of the ticket.
Q Okay. Now, the next transaction takes place on what day?
A 10/3, 2001.
Q Again, who is this invoice made out to?
A Sims General Store.
Q And now how much do they order – or receive from your company?
A Forty-eight of the 48 tablets and 48 or the 24 tablets.
Q Back up to the maximum that you have?
A Yes.
Q This indicates payment by what check number?
A Check No. 2691.
Q I want to show you what's been marked as United States Exhibit 205N. do you recognize this check?
A That's check No. 2691.
Q Is that for payment to your company of the invoice that was contained in 208N?
A Yes.

Q Now, it's interesting to note, where it says, "Pay to the order of," it's blank; is that right? [Tr. 479]
A Yes.
Q But other than that, Ms. Woodard signed the document and her signature is right there at the bottom?
A Yes.
Q Now, on the 17th of October you had another transaction with Ms. Woodard that involved the sale of generic pseudoephedrine. Let me show you the date. Is that correct, Mr. Laffoon? . . .
A The date is 10/17, 2001.
Q What's the store for? What store?
A Sims General Store.
Q If you will look down the line, I think you will see that there was a sale of generic pseudoephedrine on that day. I will point to it with my finder.
A Oh, okay.
Q How much did she order that day?
A Forty-eight of the 24 tablet.
Q Okay. You delivered those to her?
A Yes.
Q This indicates a payment by cash?
A Yes.. . . . [Tr. 480] . . . .
Q 208P, do you recognize this exhibit?
A Yes.
Q And is it an invoice?
A Yes.
Q What's the store for?
A Sims General Store.
Q And, again, you make a sale of –
A Forty-eight, 24 tablet.
Q That's the maximum you could sell of that particular brand?
A Yes.
Q It indicates – how does it indicate payment?
A Says paid cash.

Q This is on the 24th of October. Let me direct your attention now to 208Q. Do you recognize this invoice?
A Yes.
Q And what is this invoice for?
A It's for Sims General Store.
Q And does Ms. Woodard make – or the store make an order for the maximum of the generic pseudoephedrine? [Tr. 481]
A Forty-eight of the 24 tablet.
Q How does payment take place on this particular transaction, according to your notes?
A Cash, 11/14/01.
Q Now I want to show you what's been marked as United States Exhibit 208R. Is this an invoice made out to the Sims Store?
A Yes.
Q What's the date?
A 11/21/01.
Q That's a week after the previous order?
A Yes.
Q And how much generic pseudoephedrine is ordered on this particular day by Ms. Woodard's store?
A Ninety-six of the 24 tablet.
Q So what happens? What happened here? The order went up quite substantially. What happened, Mr. Laffoon?
A She would always tell to try to order more if I could. I put it in my machine. I normally wouldn't get it. Somebody just slipped up at the warehouse and sent it.
Q But you delivered 96 boxes to her that day?
A (Nods head.)
Q How does it indicate payment?
A That was paid cash.
Q There's a signature on the bottom. It's not [Tr. 482] Ms. Woodard's. Who does that signature belong to?
A I guess that's Michelle Carroll.
Q Do you know who Michelle Carroll was?

A Not really. I just – there was two or three different ones that worked there at different times.
Q Now, concerning this particular item, when you returned back the next week, was any of this pseudoephedrine returned to you because it was too much for the store to sell?
A No, not that I know of. Not that I remember.
Q Ms. Woodard never approached you and said, "Hey, what are you doing giving me so much pseudoephedrine"?
A No.
Q Now, this is a transaction for the Sims General Store, and I'm referring to 208S. And what date did that – actually, that date is not readily visible on that part of the page.
A 11/28, isn't it?
Q But you actually indicate payment on what day?
A 11/29.
Q And how much is ordered on this particular day?
A Ninety-six of the 24 tablet.
Q ...[I]s that...the same order that she had received two week earlier?
A Yes.
Q Now, sir, I'm going to show you what's been marked as [Tr. 483] 12/19 of '01. Do you recognize this object?
A Yes.
Q What is it?
A It's 48 of the 48 tablet.
Q Now, for purposes of the total pill count, 48 boxes of 48 tablets would equal 96 boxes of the 24 tablets?
A Yes.
Q Now, this particular day ... you actually had to give her a credit for cash because of something that happened. Can you tell me what happened on this particular transaction?
A That was just short in the order, I'm sure, the 12 blister pack.
Q You indicate on the front of that invoice that she initially paid with cash?
A Yes.

Q But then after you credit her account, you actually give her back some money because you failed to deliver something. What did you fail to deliver on that day?
A The 60-count ephedrine. That would be a blister pack of – of just ephedrine tablets.
Q All right.
A Well, whenever I wrote … if it was a cash ticket, I could write the credit and pay them the cash back right then against their ticket. [Tr. 484]
Q But, in fact, what happened here is that she wrote you a check after that, after you made this correction on the ticket?
A Okay. Yes, it's for that amount, but I had already made that – probably already signed it, been cashed, would be – and I just didn't change it.
Q So the check on 205T corresponds with the invoice on 208T?
A Yes.
Q Let's now go to the next week. What date is this invoice for?
A 12/26/01 date.
Q What store is it for?
A Sims General Store.
Q And now how much of the 48 count has Ms. Woodard ordered or received from you?
A Ninety-six of the 48 count.
Q So this is now double what the – it's basically double what the 48 of the 48 count was of the previous week?
A Yes. . . .
Q … Ms. Woodard actually paid you this week in what way?
A By check 2799. [Tr. 485]
Q I'm going to show you what's been marked as 205U, already admitted. What's that check for?
A I can't hardly see it. No. 2799, 327.48.
Q Does that check correspond with the previous invoice.
A Yes.
Q Who signed this check?

A Sherry Woodard.
Q Reminding ourselves of the date of this particular transaction, what was the date again on the transaction?
A 12/26, 2001.
Q And this was 208U. Now I want to direct you attention to 208V. What is the date of this transaction?
A 1/2, 2002.
Q This is a week later after the previous transaction?
A That's 96 of the 48 tablet.
Q This transaction took place a week after the previous transaction?
A Yes.
Q And how much does she order on this day, January 2nd of 2002?
A Ninety-six of the 48 tablet.
Q So now she's had two weeks in a row where she's gotten 96 boxes of 48s?
A Yes. [Tr. 486]
Q And you actually indicate on this document that she pays in what way?
A By Check No. 2806.
Q I want to show you now 205B. What does this document depict?
A Check No. 2806.
Q Again, does this check correspond with the previous invoice that we've just looked at?
A I didn't really pay attention to the amount.
Q The amount would be down here on store cost?
A Yes.
Q What is the amount?
A 307.49.
Q That's United States Exhibit 208V.
What is the amount indicated on 205V?
A 307.49.
Q So they match?
A Yes.

Q Now, a week later, on January 9th of 2002, you go back to the Sims Store, and how much pseudoephedrine do you deliver on that day?
A Forty-eight of the 48s, 48 count.
Q Why did it go back down to 48, do you remember, Mr. Laffoon?
A I don't have any idea why it went to the 96, but the 48 [Tr. 487] thing was Handi-Rak's set amount.
Q That was Handi-Rak's self-imposed limit?
A Yes.
Q But Ms. Woodard had given you a request that you were to give her as much pseudoephedrine as you could?
A I told her that I would order 96, that she wouldn't get it, but that was actually limit – that was the limit that was allowed, really, but Handi-Rak wouldn't – wasn't sending it at that time. So when I put it in there, somebody – maybe somebody new in the warehouse didn't realize Handi-Rak's limits and they just shipped it. I wouldn't have any idea what the reason was.
Q But you delivered it?
A I delivered it, yes.
Q And you delivered it knowing that it exceeded Handi-Rak's limits?
A Yes.
Q How is payment indicated on this particular day?
A Says paid cash.
Q A week later, on January 16th of 2002, do you deliver more pseudoephedrine, generic pseudoephedrine to the Sims General Store?
A Forty-eight of the 48 count.
Q And what day does this transaction take place, according to you notes? [Tr. 488]
A 1/16/02.
Q How is payment?
A Says cash.

Q So you delivered this particular pseudoephedrine on this particular day?
A Yes. . . .
Q Actually, you indicate it's a cash payment, but let me show you what's been marked as 205X. Do you recognize this check?
A It is a check to Handi-Rak.
Q Is it on the same day as the day of the previous document we referred to as 208X?
A Yes.
Q Again, what happened here sir? Didn't you credit some items back to her account?
A Yes, one item.
Q What was it?
A Some sour candy.
Q You didn't credit back the pseudoephedrine; you delivered that?
A Yes.
Q But because you credited it back to her account, that changed her actual – the cost of the actual invoice? [Tr. 489]
A Yes.
Q So after you credited back her account, how did she pay you?
A She paid me by check.
Q So check 205X responds with the invoice of 208X?
A Yes.
Q Who signs United States Exhibit 208X?
A Sherry Woodard.
Q And she actually puts down the invoice number, which is?
A 074282.
Q That corresponds to what invoice number on your credit check that you gave credit back to her on?
A 074828
Q Then finally, sir, 208Y, that indicates a transaction on what day?
A 1/23, 2002.

Q How much on that particular day of generic pseudoephedrine did you sell or deliver to Ms. Woodard's store?
A Forty-eight 48s and 48, 24s.
Q Okay. Thank you. Sir, something happened after this last transaction on January 23rd of 2002 with your relationship with Ms. Woodard. What was that?
A To the best of my knowledge, that was then I went into [Tr. 490] the store and she told me that – I don't remember who she said had been there, the police or the federal agents or whatever. And I said, "What were they here for? What did they do to you?" She said, "Well, nothing really. All they asked me about was Coleman fuel." And that's about the extent of what it was. I don't think that she ordered any more after that, or maybe not that week, anyway.
Q Well, actually, after January 23rd of 2002, does she order any more generic pseudoephedrine from you?
A I can't really remember, but I don't think that she did.
Q In fact, these invoices here that you've looked at, they don't indicate any further transaction of generic pseudoephedrine?
A Best I remember, no.
Q And these invoices would have all the transactions that you engaged in with the Sims General Store?
A Yes.
Q Sir, did Ms. Woodard ever tell you what she was doing with the generic pseudoephedrine that she was purchasing from you?
A Really, the only think that was ever said on it was at first when she started buying it that she and seemed like maybe a friend or two or some other – her family was using it for weight loss. . . . [Tr. 491] . . . .
Q And, sir, when you delivered – every time you went to the store to deliver this generic pseudoephedrine, where did Ms. Woodard or her store clerks take the items?

A I never did see any of it go on the shelf in any way to be sold over the counter. If it was removed from where I checked it in while I was there, to the best of my knowledge, it went into the back room.
Q You saw them take it into the back room?
A Yes.
Q You were in the store on a weekly basis from at least June 2001 to June of 2002?
A Yes.
Q And you never saw any of the generic pseudoephedrine that Ms. Woodard was ordering from you being sold on the shelves in the store?
A Not the generic Actifed.
Q That's the Swan product?
A Yes.
Q ...[Y]ou've described the store as being kind of out of the way.
A Pretty much. It was out in the country, yeah, at a junction of highways. . . . [Tr. 492] . . . .
Q . . . . Let's start out, you've pled guilty, and according to Mr. Eggert, it was in part for conduct in this case; is that correct?
A Yes.
Q Okay. And what is the other part?
A The Handi-Rak itself, the officers of Handi-Rak and some other salesmen that were doing some thing they weren't [Tr. 494]

EXCERPTS FROM TRIAL TESTIMONY OF BENJAMIN HENDERSON:

Q ... Officer Henderson, where is it that you work?
A I'm employed with the City of Pittsburg, Kansas, police department.
Q Were you employed with the City of Pittsburg, Kansas, police department on or about January 13th of the year 2001?

A Yes, I was.
Q On that day did you have an opportunity to come into contact with an individual by the name of Frances Duckett?
A Yes, I did.
Q Do you recognize Ms. Duckett as being present in the courtroom here today?
A Yes, I do.
Q Would you please identify her for the record?
A She is the lady sitting with the multi-colored jacket with the blue color. [Witness identifies Defendant Duckett].
COURT: The record will so reflect.
Q How was it on that day that you had an opportunity to come into contact with Ms. Duckett? [Tr. 517]
A It was through patrol, as patrolman, I came into contact with her.
Q Describe exactly how it was that during the course of your work on that day that you came in contact with her?
A I was on patrol on north end of my city during the early morning hours of Saturday. Usually not a heavy call during that time, so I took the initiative to do routine license plate checks on local hotels looking for wanted or stolen vehicles.
Q During the course of your routine license plate checking, did you come across a vehicle that aroused your suspicions?
A Yes, One of the license plates I ran for Missouri had a NCIC hit on it regarding an arrest warrant.
Q For whom?
A Billy Brassfield.
Q So what did you do after you discovered this license plate with this hit for Mr. Brassfield on it?
A I had my dispatcher contact the originating agency that placed the warrant and confirmed the warrant was still active and they'd be willing to extradite.
Q What did your confirmation reveal?
A The warrant was still active and that they would be willing to extradite Mr. Brassfield.

Q So tell me, Officer Henderson, what did you do after you discovered that the warrant was still active? [Tr. 518]
A I requested additional units respond to my location, and we made contact with the representative from the hotel and informed them of the nature of why we were there.
Q Did the hotel representative indicate to you which hotel room Mr. Brassfield was staying in?
A Yes. Once they learned there was an arrest warrant for Mr. Brassfield, they informed us he was in Room 300 of their hotel.
Q So you approach the room that Mr. Brassfield is staying in?
A Yes, that's correct.
Q Were there other officers with you at that time you approached the room?
A Yes. Lieutenant Andrew Stinsa, Officer Bill Murray, and Officer Mike Fields. Sergeant Brenton also arrived shortly thereafter.
Q Now, sir, what did you do when you approached the room?
A We knocked on the door. And the warrant showed that it was for an arrest for methamphetamine-related offenses. Having had prior experience in that, we know sometimes firearms are employed with – it's been my experience firearms are often associated with these types of offenses. For officer safety purposes, Officer Murray knocked on the door and announced it was housekeeping. We heard noises from within. I believe it was a female voice asked, "Who is it?" [Tr. 519] Officer Murray responded, "Housekeeping." For approximately three or four minutes we heard noises, shuffling around, bottles being knocked over. The subjects inside told us it was going to be a few minutes, they weren't dressed yet, and we waited patiently in the hallway until they opened the door. When they opened the door, we made contact with Ms. Duckett and another subject named Clyde Rainwater. Those two subjects were immediately detained and handcuffed for officer safety.

Q That's the same individual that's sitting over here?
A Yes, that is.
Q After you detained Ms. Duckett and Mr. Rainwater, did you ever determine Mr. Rainwater's relationship to Ms. Duckett?
A Yes, I believe that was -- may I refer to my notes, please?
Q Certainly. Wasn't he her brother?
A It was brother or brother-in-law. I cannot remember which. But it was something.
Q So after you detained the two individuals, what do you do?
A We detained Mr. Rainwater in the hallway. And the NCIC gave us a brief physical description of Mr. Billy Brassfield but it sort of vaguely matched Mr. Rainwater, so we weren't sure that it was going to be him or not, and we asked Mr. Rainwater to produce some type of identification. He gave [Tr. 520] us a Missouri driver's license but it was broken up and kept in a clear plastic pouch. I had my dispatcher run the numbers for verification; however, Lieutenant Stinsa, who has had far more experience than I, looked the license over and stated he believed it might have been a fake license, and he took it and walked down the hallway with it to look under better lighting with it. I noticed some other forms of identification in Mr. Rainwater's wallet, and I took those out. One was an old Pittsburg State University school ID card and the other was a photocopy of a Social Security card. After I removed those items, I notices that there was a small pliable object in Mr. Rainwater's wallet behind the IDs that appeared to be a folded up size baggie. Based on my training and experience, I know that small quantities of illegal substances are often transported in baggies such as that. I removed the baggie from Mr. Rainwater's wallet and I unfolded it, and it appeared to contain what appeared to me, based on training and experience again, to be methamphetamine.
Q Did Mr. Rainwater at that point make a suggestion to you about what you can do with the methamphetamine?

A Yes. Shortly after that he approached myself and Lieutenant Stinsa, took us aside and said he would tell us who Mr. Brassfield was if we lost that baggie.
Q How did you respond? [Tr. 521]
A Lieutenant Stinsa informed Mr. Rainwater that we could not do that and that we would make a consideration to contact our local county attorney and inform them of this cooperation with him if he will assist us.
Q Officer Henderson, with this information you had a suspicion now that Mr. Brassfield was located where?
A Mr. Rainwater informed us that Mr. Brassfield was actually hiding in the hotel room. After we had removed Mr. Rainwater and Ms. Duckett from the room, we searched it for another additional person who might be hiding but we didn't locate anybody. Mr. Rainwater informed us that Mr. Brassfield was hiding behind one of the dressers in a little cubbyhole area on the ground in the hotel room.
Q All right. At that point what do you do?
A Lieutenant Stinsa, Officer Murray, and Sergeant Nardis moved that dresser away from the wall and discovered Mr. Rainwater lying on the ground – excuse me, Mr. Brassfield.
Q What happened after you saw Mr. – where was he at exactly?
A The rooms, I believe, are two bedroom, and one of the beds towards the foot of it, approximately 3 feet away was a dresser probably about 4 feet high, but it was about 5 feet probably wide. Once the dresser was removed from the wall, a space small enough for a person to hide was discovered there, [Tr. 522] and that's where Mr. Brassfield was lying on the floor. When he was removed, Lieutenant Stinsa found items of what he believed to be drug paraphernalia and scales lying underneath Mr. Brassfield. And after we came into contact with Mr. Brassfield, we confirmed his identity via Missouri driver's license.
Q Now, let's go back in this particular incident to when you first came into contact with Ms. Duckett, shall we? When

you spoke with Ms. Duckett after she opened the door and you identified yourself as a police officer, did you ask her where Mr. Brassfield was?
A Yes, we did.
Q And how did Ms. Duckett respond to your direct question?
A Initially, I believe she stated that Mr. Brassfield was not there and that he had already left. I asked where he was at that time, and she hung her head down and said, "I can't say," which I took to believe that she knew where he was but just did not wish to tell me for whatever reason.
Q All right. Now, after you discover some of this drug paraphernalia – these drug paraphernalia items in the room, did you contact Detective Austin of your police department so that he can conduct a investigation of that location?
A Lieutenant Stinsa contacted Detective Austin.
Q Did Detective Austin eventually arrive?
A Yes, he did. [Tr. 523]
Q Did he bring with him a state search warrant to search the hotel room?
A Not at that time. He arrived on scene first to overview the situation and get an assessment of what had happened. Then he returned to our police station where he prepared an application for search warrant.
Q Then he did return at a later time with that search warrant to conduct a search of the room and Mr. Brassfield's vehicle outside?
A That's correct.
Q And he was responsible for collecting the evidence from that particular search ?
A Yes, the evidence that we could hold. Our police agency, our evidence room is not certified to hold chemical evidence associate with methamphetamine laboratories.
Q So chemical waste or chemical products would have been photographed and then disposed of according to regulation?

A Actually, Sean Campiti, a member of HIDA drug task force, he also responded on scene and he primarily handled the evidence, if I remember correctly.
Q The hazardous material?
A That's correct.
Q But Detective Austin was present and would have observed those items?
A Yes, that's correct. [Tr. 524]
Q Were you also able to observe the items?
A Yes, but at the time I wasn't trained, so I wouldn't know exactly what I was looking at. . . .
Q Where did you take Ms. Duckett after you arrested her?
A She was transported to the Crawford County jail. We don't have a holding facility in Pittsburg city.
Q You had no further contact with her after your initial interview with her and her arrest?
A That's correct. . . .
Q At the time of this search – or of this arrest in Pittsburg, Kansas, you identified three subjects: a Billy Brassfield, a Frances Duckett, and a Clyde Rainwater?
A That's correct.
Q And that's all the people that were involved in this instance? [Tr. 525]
A For non-law enforcement, yes. . . .
Q I wasn't referring to law enforcement. And you conducted a search and seizure of some physical evidence incident to these arrests?
A After the search warrant was obtained, yes, I did.
Q I'm going to show you what I've marked as Defendant Weston's Exhibit I, and I'm going to ask you if you can identity this?
A This is a copy of our evidence custody receipt.
Q Did you fill that out or did somebody else?
A I filled part of it out, from I believe page 2 to page 3.

Q But you recognize that to be the recovered property document that you in the ordinary course filled out after this search?
A That's correct.
MR. APPELQUIST: Offer Exhibit I. . . .
COURT: I is admitted.
Q Mr. Henderson, I'm going to see if we can put this up on the screen. And so the jury – first of all, at the bottom here who's indicated as suspect with regard to this search?
A Billy R. Brassfield. [Tr. 526]
Q And I'm interested to ask you about a couple of items that you found apparently on Mr. Brassfield. What about Item No. 5? What's Item No. 5?
A Item No. 5 appears to be an Iver Johnson .22 caliber handgun. You'll denote to the right of that where it says inside purse-brown, there's a number beside that, 19. That is our identifying officer number. No. 19 at the time was Detective John Austin.
Q I appreciate that. But the point is that you found a .22 caliber gun?
A I did not find that.
Q Or somebody did?
A Yes, that's correct.
Q Also notice Item 7. What is that?
A Letter with subject's name.
Q Why would you seize personal mail of a suspect with his name on it?
A I would imagine just to show namesake, that it was the subject.
Q Positive identification of the suspect?
A I could imagine so.
Q That be the evidentiary value of that, wouldn't it?
A That would be the only reason I believe I would seize it.
Q Moving to page 2, it looks like Item No. 29, tell about that. And I think 29 actually continues on to the [Tr. 527] next... page.

A Ruger Mark 2, .22 caliber handgun. . . .
Q And, again, the suspect we're talking about here is who?
A Billy Brassfield.
Q Okay. So he's got two guns in Pittsburg, Kansas, right?
A Actually, I believe –
Q Was there another one?
A -- Ms. Duckett claims responsibility for the first one.
Q Oh, okay. Now I'm interested to ask you – oh. And then on page 3, Item 30, what is that?
A Various receipts and notes.
Q ... [T]he evidentiary value of that is that they could be used to associate a particular suspect with particular evidence?
A Particular point in time, yes, that's correct.
Q I want to show you a copy of what is marked as Government's Exhibit 219 and ask you if you recognize that? I appreciate the copy is not just good. 219 looks like a picture of a check, isn't it?
A That's correct.
Q And whose check is that?
A Appears to be Rick Brassfield.
Q I'll represent to you that Rick Brassfield and Billy [Tr. 528] Brassfield are the same person. Does that – do you have any reason to disagree with that?
A Mr. Brassfield's middle initial is R. I do not know what his full name is.
Q Again, the reason that you would have seized this – and you would photograph that in order to document the seizure, wouldn't you.
A Yes.
Q And the evidentiary value of that is that is goes to further prove the identity of the suspect and associate the suspect with the location of the search?
A Again, that's correct.
Q And I'm also interested to ask you about the rubber gloves. Why do you wear those when you seize evidence?

A Generally, when we wear rubber gloves, it's not to contaminate with fingerprints, but also with this nature we don't want to get chemicals on our hands.
Q Let me get back to the first of the two reasons you gave me. So you don't contaminate the potential evidence with your fingerprints?
A Correct.
Q In case that you would submit an item such as this for latent fingerprint analysis?
A That's correct. . . . [Tr. 529] . . . .
Q . . . . The one day that you were at this hotel in Pittsburg, Kansas, that's the only day that you've ever had any association with this particular incident; is that correct?
A Prior to being subpoenaed to our local courts, yes.
Q Sure. I understand that. And there were three people that were there in this motel room, one of which didn't become apparent for, what, five minutes, ten minutes?
A That's fair to say.
Q You weren't there more than probably five minutes or so before you pulled this dresser out and saw Mr. Brassfield, were you, really? [Tr. 530]
A I'd probably say around ten minutes or a little bit over.
Q Not some extended period of time?
A No.
Q Nobody left? Everybody was still standing around there; is that correct?
A That's correct.
Q And when you asked was it – were you the one that asked Ms. Duckett about if she could tell you where Mr. Brassfield was and when she kind of put her head down, said, "Well, I really can't say"?
A Yes, that's correct.
Q And she was in the room there where Mr. Brassfield was when she said that, close to where he was; is that correct?
A That's correct.

Q And I take it she didn't really – from the way you described it, she wasn't exactly shouting out anything when you said that to her, was she?
A No.
Q What did you mean, then, obviously when you say she looked – kind of put her head down said, "I can't say"?
A She became kind of despondent, like upset while we were there and, you know.
Q Where was she when she – and she was talking I guess rather softly when she said that?
A That's correct. [Tr. 531]
Q Okay. And when she said that, was she looking in any direction there in the room, or do you remember?
A We were out in the hallway.
Q Okay. I believe she was looking actually away from it.
Q When you say you were in the hallway, you mean the hallway totally outside?
A Totally outside the hotel room in the conference area.
Q And Ms. Duckett never had any problem about telling you who she was, did she?
A No. No.
Q And as a matter of fact, were you – did you – were you there or did you inquire of her whether she had her own vehicle to come up there in or –
A I don't believe I inquired that.
Q There was another vehicle there?
A There was another vehicle there, yes.
Q So there were vehicles there other than this vehicle that you all searched that belonged to Mr. Brassfield, were there not?
A That's correct.
Q Okay. And then again, there were also other people there, i.e., Ms. Duckett and her brother, Clyde Rainwater; is that correct?
A That's correct. [Tr. 532]

Q Is there anything – I remember you once said it could have been her brother, might have been her brother-in-law. Would you dispute the fact that he is her brother?
A No. I just didn't have a chance to look over my notes, but I believe the brother would be accurate.
Q Okay. So it was Ms. Duckett's brother; is that right?
A I believe so.
Q Okay. Fine. And then once Ms. Duckett, by her softness and the way she was talking, the way she said things and the way she answered you made it pretty apparent to you somebody knew something, didn't it?
A That's correct.
Q Okay. And she want' just giving – standing up in a firm, loud, confident voice giving you a real con job, was she?
A No, I don't believe so.
Q And you did not, I take it, then – did you actually leave the area with Ms. Duckett or did somebody else leave the area with her?
A I believe Officer Murray and Office Field went down to the interview room with her at some point.
Q And were you there when Mr. Brassfield was asked about all this stuff that he had underneath him?
A I believe I was present, but I don't believe I denoted [Tr. 533] anything in my report about such a conversation. . . . [Tr. 534] . . . .
Q These items found there that we were discussing – and were you there when Mr. Brassfield indicated that they we all his?
A Again, I have no denotation in my narrative on that. I cannot feel comfortable saying either way.
Q Who would have been there when he would have been inquired of as to who they belonged to?
A Officer Bill Murray or Lieutenant Stinsa. . .
Q Did you make any searches of Mr. Brassfield's vehicle? [Tr. 535]

A I assisted in the search of the vehicle after we completed the hotel room and the limit of my searching of the vehicle was just to catalog what was removed.
Q In doing so, though, you're confident that the vehicle – you made certain the vehicle you're speaking of was Mr. Brassfield's vehicle, were you not?
A Yes, that's correct.
Q And you also indicated that Ms. Duckett had another vehicle there?
A There was another vehicle. I can't ascertain who it belonged to at this point.
Q Okay. Did you ascertain who the room was rented to?
A The staff of the hotel indicated Mr. Brassfield.
Q Okay. The staff didn't indicate Ms. Duckett, did they?
A I don't believe so.
Q ...[H]ad the room already been paid for?
A I believe so. I believe they stated by check.
Q Did you recover the check or ever see the check?
A That, I cannot say. . . . [Tr. 536] . . . .
Q Going back to what Mr. Appelquist asked you about the gun. The gun in the purse was located with what person?
A Brown female's purse.
Q Whose purse was it?
A I believe Ms. Duckett's.
Q Okay. And it was Mr. Austin and Officer Campiti that actually conducted the search and you just assisted?
A That's correct. . . .
Q Did you find a gun in a purse?
A No, I did not. . . . [Tr. 537] . . . .
Q Whoever found the gun found the gun at a time when you weren't in the room; is that correct?
A That's correct. While they were en route, I informed Officer Murray, who was transporting her, that there was a gun there. For officer safety purposes, she wanted us to be aware of that. . . .

Q She just said it was there; she didn't say it was hers, did she?
A I don't have in it quotations in my report so I can't say for sure what her exact statement was.
Q You don't have it in quotations?
A Yes. Something like that, if it's an exact phrase, I prefer to actually have it in quotation, the exact wording. I have in my report she indicated it was her purse, but I don't know. I didn't listen to the radio traffic.
Q Once again, she didn't indicate this gun was hers?
A I would have to say at this point no. . . . [Tr. 538]

EXCERPTS FROM TRIAL TESTIMONY OF JOHN AUSTIN:

Q Sir, what do you do for a living?
A I am a detective with the Pittsburg Police Department.
Q Is that Pittsburg, Kansas?
A Pittsburg, Kansas, Yes.
Q As opposed to Pittsburgh, Pennsylvania. [Tr. 539] Officer Austin, were you working with the Pittsburg, Kansas, police department o or about January 13th of the year 2001?
A Yes, I was.
Q And on that date did you have an opportunity to come into contact with an individual by the name of Frances Duckett?
A Yes, I did.
Q And do you recognize Ms. Duckett as being in the courtroom today?
A Yes, I do.
Q Would you please identify her for the record?
A She's sitting there behind that attorney with the over-jacket, blue trim. [witness identified Defendant Duckett.]
Q Officer Austin, how was it that you came into contact with Ms. Duckett on the day, January 13th of 2001.
A After completing a search warrant of a room at Super 8 motel and a vehicle on the parking lot there, KBI Agent Sean

Campiti and I went over to the Crawford County jail to interview the suspects.

Q Let's go back to the search warrant before we talk about what Ms. Duckett told you. [Tr. 540] You had an opportunity to assist Sergeant Campiti in the execution of the search warrant? ...

Q ... And he's unable to be here today because he had a very serious car accident and wasn't able to be here?

A Yes.

Q But you were present with Agent Campiti and you observed the same things he observed during the course of his investigation?

A Yes.

Q Sir, I'm going to show you what's been marked as United States Exhibit 210, 211, 212, 213, 214, 215, 216, 220, 221, 222, 223A and 223B, 224, 225, 226, 227, 228, 229, 230, 231, ask if you can identify those photographs for me?

A Yes, sir. 210 is a photograph of a brown suitcase that was located in the white Dodge pickup belonging to Billy Brassfield. . . .

Q Would you identify all the pictures en mass, look through all of them and make sure that they are pictures that you recognize? Then if we could introduce them into evidence, then we can talk about them [Tr. 541] individually. . . .

A Okay.

Q Do you recognize those photographs?

A Yes, sir, I do.

Q And those photographs, do they fairly and accurately depict the condition of the items as you observed them when you conducted your search warrant on January 13th of the year 2001?

A Yes, they do.

Q I realize you didn't take those photographs yourself, but you were present?

A Yes, sir.

Q And they look reasonable similar to what you observed?

A Yes, sir.
MR. EGGERT: At this time I move for admission of the exhibits that I listed. . . .
COURT: -- those exhibits are – admitted. . . [Tr. 542]
Q I would also like to show you, sir, Exhibit 219, ask you if you can identify that object?
A Yes.
Q Does that picture fairly and accurately depict the condition of a check that you seized on that day from your search?
A Yes, sir.
MR. EGGERT: . . . I'd move for admission of 219. . . .
COURT: 219 is admitted.
Q Describe what your search found.
A Of the room or the vehicle?
Q Let's start first with the room, then we'll go on to the vehicle.
A Okay. I will refer to my report here. We found several items in the Room 223 at the Super 8 motel on that date, to include a set of – first piece of item that we entered in was a black plastic portable scales, a bag containing coffee filters, a black cloth pouch containing a spatula, syringes, silver spoons, and I believe three small plastic baggies with possible controlled substance. Also found a .22 caliber handgun, a syringe containing an unknown liquid, some mail addressed to some subjects, a blue plastic chemical suit. We found some – I believe like it was an [Tr. 543] address book or planner. We found several hypodermic needles. We found cut off straws, paraphernalia. We found empty bottles of Actifed – or, correction, empty boxes of Actifed. Found a plastic baggie containing green leafy substance, safety glasses, mirrors with straw and possible residue. Let's see. We also seized, I believe, some cell phones at that time, several items that were pills that were unidentified at that time different locations inside the room, lithium batteries. Let's see. Another address book, some cash money. Okay. And Then I think we're getting into some of truck items.

Q Those are items that you found inside the room itself?
A Correct.
Q And you're ar estigator that does what kind of work specifically for th tsburg, Kansas, police department?
A I do all the criminal investigation for the department to include drug and narcotics investigations.
Q Had you had the opportunity as a narcotics investigator to go into areas where suspected drug activity was taking place?
A Yes, sir.
Q Based upon the items that you observed in the room, what did you conclude was taking place in that room?
A I concluded that there was – if not the manufacture, [Tr. 544] there was at least the distribution of methamphetamine going on and/or the use of.
Q You also conducted a further search of the truck?
A Yes, sir.
Q And these are the pictures that you just identified?
A Yes, sir.
Q If you could, look at United States Exhibit 210. What does this picture depict?
A That is a brown suitcase. I believe that came from the cab of the truck, of the white Dodge Ram truck that was registered to Billy Brassfield.
Q 211 is another picture of the same item. What's in this item, sir, that causes you interest as a narcotics investigator?
A Well, several bottles there, jars with – containing unknown liquids which are chemicals that are used in the production of methamphetamine. The camp fuel is also a precursor in the production of methamphetamine. I believe some of those pictures will depict some of the liquids were what we call two-layer liquids. Obviously there's a separation process going on.
Q For the manufacture?
A For the manufacture, yes.
Q What does 212 depict, sir?

A That was a jar that was found in the back seat. It's [Tr. 545] hard to tell by that picture, but I believe that was also a two-layer liquid that was separately found.
Q 213 depicts what, sir?
A Those are propane tanks that we found in the back of the pickup, in the bed of the pickup. Those were seized because of the corrosion that we see on the steel fittings is something that we commonly see when these type of containers are used to transport anhydrous ammonia.
Q Describe what it is on those fittings that causes you to suspect that anhydrous ammonia was stored in them.
A The discoloration. Anhydrous causes a reaction that causes steel fittings to corrode, and it's common – it's a bluish-colored corrosion that we see.
Q 214 is a close-up picture of one of the tanks, and it clearly depicts what, sir?
A Clearly depicts the bluish corrosion that I was talking about that occurs.
Q 215 is just another photograph of one of the tanks?
A Yes, sir.
Q What is 216?
A 216 is a small hot plate that they are often used to heat up when they're doing a reaction. To speed up the reaction, they use the heat. It's commonly used to find these portable hot plates in use.
Q You found some personal identification of the scene. [Tr. 546] 219 is a check?
A Yes, sir.
Q Who is the check written by, if you can – and who's the check from?
A The check is written from Rick Brassfield.
Q And it's to pay for what?
A For the room at Super 8.
Q Actually, it not the hotel he was staying at, is it, because that's a date that's different than the one –

A It's a different check, yes. Or different date from that, yeah.
Q 220 is also a check that's written to a Super 8 motel. Again, whose check is this written on?
A Rick Brassfield.
Q Where did you find those two checks at?
A They were found in the pickup of Billy Brassfield.
Q Then we have a Western Union money order which is 221. Who's the individual that made out this money order, according to the document?
A It would be Frances Duckett.
Q Where did you find that item?
A That was also found in the cab of Mr. Brassfield's truck.
Q And the date on this particular item, if you could see it?
A I believe it says 12/3 of 2000. [Tr. 547] in there, in the room, and she had asked Mr. Brassfield to get rid of it.
Q All right. Specifically, items. Of methamphetamine?
A Yes.
Q Did she also indicate to you that at one time she had been addicted to methamphetamine?
A Yes.
Q But she said at this time she was no longer using methamphetamine?
A At that time, yes.
Q Did she also admit to the fact that she assisted in hiding or concealing Mr. Brassfield when the police came knocking on the door of the hotel room?
A Yes, she did. . . . [Tr. 551] . . . .
Q Was a report written in this case?
A Yes.
Q It was written by Officer Campiti but you were present during the course of the investigation?
A Yes, I was.
Q Does this report assist you in refreshing your recollection about what was said?
A Yes, it does.

Q Have you looked at this report?
A Yes.
Q Is this particular paragraph, the top paragraph of page 2, that refreshes your recollection about what was said?
A Yes.
Q What did Ms. Duckett tell you about what was going on in that room when the agents knocked on that door?
A Ms. Duckett told us that when the officers knocked at the door, she helped Mr. Brassfield hide, and then she also passed items to him to try to conceal.
Q Okay. Also, Ms. Duckett gave you some indications that her boyfriend had been in trouble in the past with the police?
A Yes. . . . [Tr. 552] . . . .
Q Now, it's true, though, that when you asked her how she assisted Mr. Brassfield, she indicated she helped him hide?
A Yes, sir.
Q And that she gave him items to hide with him in the back of this dresser?
A Yes, she did. . . .
Q Fact is, these items that Mr. Brassfield had when he was hiding back there and items that he had there in the pickup, he admitted all that stuff was his, didn't he?
A Yes, he did. . . . [Tr. 560]

EXCERPTS FROM TRIAL TESTIMONY OF JOSHUA MOORE:

Q What do you do for a living?
A I'm a deputy sheriff with the Canadian County Sheriff's Office in El Reno, Oklahoma. . . .
Q Sir, how long have you been a deputy sheriff with the Canadian County Sheriff's Department in El Reno, Oklahoma?
A I've been a deputy for three years.
Q Were you working as a deputy sheriff on or about October 12th of the year 2003?

A Yes, I was.
Q And on that day did you come into contact with an individual by the name of Lonnie Weston?
A Yes, I did.
Q Do you recognize Mr. Weston as being present in the courtroom today?
A Yes, I do.
Q Would you please identify him for the record?
A Right there in the gray suit. [Tr. 562] . . . [Witness identifies Defendant Weston] . . . .
Q Can you tell us – before we get started, actually, as to how you met Mr. Weston on October 12th of 2003, could you tell us where Canadian County, Oklahoma, is?
A Canadian County, Oklahoma, is approximately 35 to 40 miles west of Oklahoma City.
Q Would you describe the nature of the county? Is it rural or urban or a mixture of both?
A The east side of the county is a – more of an urban area with some Oklahoma City incorporated area. The west side of the county is a rural area of the county.
Q So on October 12th of 2003, were you conducting a regular routine patrol in your patrol vehicle?
A Yes, I was.
Q Which part of the county were you in at that time?
A I was in the western half of Canadian County.
Q This is the kind of country area?
A Yes.
Q And where were you at at approximately 12:15 in the [Tr. 563] morning on October 12th of 2003?
A I was at Northwest 234 and Calumet Road which is the western part of the county. . . .
Q . . . . What were you doing during your patrol at that area?
A I was checking the area because there was approximately 20 anhydrous tanks stored behind a rural grain elevator out in that area.

Q Now, anhydrous ammonia tanks are commonly found in rural areas?
A Yes they are.
Q And the legitimate purpose for anhydrous ammonia, as best you understand it, is what?
A As a fertilizer, the legitimate purpose.
Q Oftentimes people attempt to steal anhydrous ammonia?
A Yes, they will.
Q And they'll try to do that for what purpose?
A Manufacturing methamphetamine.
Q So your purpose for patrolling these anhydrous tanks was to prevent what?
A The theft and manufacturing. The theft of anhydrous [Tr. 564] ammonia and the manufacturing of methamphetamine.
Q So as you are sitting there driving around in this area with all these anhydrous tanks, what do you see?
A I observe a vehicle coming from the north heading southbound past El Cresha Grain and Feed.
Q Is there anything about this vehicle that causes you some concern?
A It's early in the morning. It stops approximately one quarter of a mile south of El Cresha Grain and Feed, stopped in the roadway.
Q Again, it's late at night.
A Yeah.
Q It's in a rural area; a lot of anhydrous tanks around. You're suspicions are aroused?
A Oh, yes.
Q So you go to the vehicle, and what do you attempt to do?
A I approach the vehicle. I'm heading north and it's facing southbound, and as I turn around in the vehicle I activate my emergency equipment. I activate my lights.
Q You're in, obviously, a marked patrol car?
A Yes, I am.
Q After you activate your emergency lights, what does the vehicle do?

A The vehicle sped up for that last quarter mile, then slowed down to make a turn. [Tr. 565]
Q Did you follow?
A Yes, I did.
Q And then it turned. Which direction did it turn?
A It turned west.
Q Then there was another deputy with you at that time?
A Yes, there was.
Q What was his name?
A Jeremy Johnson.
Q So he's the passenger. Are you driver of your vehicle?
A Yes. Yes.
Q So after the vehicle turns, do you continue to follow the vehicle?
A Yes, I do.
Q And describe the chase. Describe what happens next.
A As the vehicle turned west, it took off at a high rate of speed, and I advised dispatch – I activated my siren. I advised dispatch I would be in pursuit of this vehicle, gave a vehicle description.
Q Now, according to the report, you say the vehicle reached speeds of what during the first part of this pursuit?
A It traveled between 85 and 95 miles an hour.
Q Describe the type of road that this vehicle is traveling down as you're pursing it.
A It's a gypsum-based road.
Q Gravel road, basically? [Tr. 566]
A Yes.
Q As it's speeding away from you, what's flying in the air?
A Dust, lots of dust.
Q As you're continuing to pursue the vehicle, what does an occupant in the vehicle begin to do to you?
A Guy on the passenger side begins to shine a spotlight out of the window into my eyes.
Q Okay. And you continue your pursuit?
A Yes, I do.

Q Describe what begins as the pursuit draws to a conclusion.
A As the pursuit draws to a conclusion, it crashes into a – vehicle crashed in a T intersection about 9 miles from where we started out.
Q And after the vehicle crashes, do you and Deputy Johnson approach the vehicle?
A Yes.
Q And when you approach the vehicle, who do you see in the driver's side of the vehicle as you approach it?
A The defendant, Lonnie Gene Weston.
Q Mr. Weston was the driver?
A Yes.
Q Did you ask Mr. Weston to exit the vehicle?
A I ordered Weston out of the vehicle.
Q And what did Mr. Weston do in response? [Tr. 567]
A He refused. He would not comply.
Q So what did you have to do in order to retrieve him from the vehicle?
A I had to help extract him from the vehicle.
Q As you were doing so, what occurred?
A As he came out of the vehicle, he went to fall down on the ground. As his knee hit the ground, he tried to get back up and take off running, tried to escape my hold.
Q What did you do?
A I ended up on top of Mr. Weston trying to take him into custody. Pretty good struggle ensued. I couldn't get the handcuffs on Mr. Weston by myself. I was only able to get a handcuff on his right arm.
Q He's struggling during this entire time?
A Yes, he is.
Q So who has to assist you in actually restraining Mr. Weston and taking him into custody?
A Deputy Johnson.
Q Were you successfully able with Deputy Johnson's help to put Mr. Weston in custody?
A Yes, we were. . . .[Tr. 568]

EXCERPTS FROM TRIAL TESTIMONY OF STEVE CARROLL:

Q Would you describe how it was that you began your investigation that day?
A I was the on-call narcotics investigator that week. I received a call from our dispatcher advising that one of our deputies, Deputy Josh Moore, had got into a pursuit with a vehicle. The vehicle had crashed, and upon the vehicle crashing, he located several propane tanks in the back of the pickup and also items he believed were related to the manufacturing of methamphetamine.
Q Did you arrive at the location where this vehicle was?
A Yes, I did.
Q When you arrived at that location, were the suspects still present at the scene?
A Two of them were. One had already been transported to the hospital.
Q Which one was that?
A Mr. Bilderback.
Q Was there an individual there by the name of Lonnie Weston?
A From my understanding, yes.
Q Do you recognize Mr. Weston in the courtroom today?
A No sir, I do not.
Q That's because you didn't interview him during the course of this investigation?
A No, sir. [Tr. 577]
Q Now, sir, describe the search that took place during the time that you were there in this vehicle.
A The vehicle was wrecked. It had wrecked into a T intersection, across the edge of the T intersection, was sitting in a bar ditch. The pickup was short, wide bed, regular cab truck with a hard fiberglass Tonto cover on the back. The Tonto cover was partially open and you could look into the

back of the pickup. In plain sight in the back of the pickup were four large industrial-size propane tanks. There was also some tools, boxes, a cooking pot, and then also other items inside the vehicle.

Q Let me, first of all, stop you there and ask you about these large cylinders and cooking pot. I want to show you what's been marked as United States Exhibit 247. . . . Can you tell me, was that a digital photograph that you took of the scene involving those particular tanks?

A Yes, it is.

Q Except for the fact that it's in black and white as opposed to color, does that picture fairly and accurately depict the condition of the tanks as they existed at the time you seized them on October 12th of the year 2003?

A Yes, they do.

MR EGGERT: At this time I'd move for admission of [Tr. 578] United States Exhibit 247. . . .

COURT: 247 is admitted. . . .

Q All right. Describe what these tanks are, sir.

A These are approximately 20 gallons in size industrial-size propane tanks commonly used for propane on forklifts, things of that nature that are used in warehouses.

Q On this particular day, though, they didn't contain propane, did they?

A No, sir.

Q And what did you do to ascertain what was actually inside these tanks?

A I removed the tanks from the vehicle. They were taken to a safe location. We were out in the field in the rural part of the county. Taken out in the middle of the field. We have several presumptive field tests that we conduct on anhydrous tanks that contain what we suspect are anhydrous ammonia containers. Anhydrous has a very strong, pungent smell similar to ammonia, Mr. Clean. It also – the test that we do [Tr. 579] are smell tests which is ammonia. We also do the rapid dissipation into atmosphere. We also do a thermometer

test on it. Tested minus 38 degrees Fahrenheit. Also did a litmus paper or pH test on the liquid inside the tank, and it tested very caustic at approximately 14 or more. And then also the containers had valves on them, brass valves, and when anhydrous ammonia commonly comes in contact with brass, it discolors it or turns it to a bluish-green color.

Q Unfortunately, that's why it's so important that this is a black-and-white picture. Were these particular items that you've described, did they have that bluish discoloration on the brass fittings?

A Yes, sir.

Q So according to the test that you performed, what was contained in these particular cylinders?

A Anhydrous ammonia.

Q And, again, we had heard Deputy Moore testify, the smell was pretty bad?

A Yes.

Q Would you agree with that?

A Yes, sir.

Q I want to show you now what's been marked as United States Exhibit 261 and ask if you can identify this photograph?

A Yes, sir. [Tr. 580]

Q What is this photograph?

A This is a large cooking pot that was discovered there inside the pickup bed. It was directly behind the driver's seat towards the cab.

Q And this cooking pot contained a substance of some type?

A Yes, sir.

Q And you seized it and sent it to the laboratory for testing?

A Yes, sir.

Q Again, other than the fact this is a black and white photograph as opposed to color, does this picture fairly and accurately depict the condition of the item that you seized on October 12th of 2003?

A Yes, it does.

MR. EGGERT: At this time I'd move for admission of United State Exhibit 261. . . .
COURT: 261 is admitted.
Q Now, you seized this particular container?
A Yes, sir.
Q And what did you do with the item that was – this granular substance that was contained inside this steel stainless container?
A The substance inside the pot, two samples were taken. We [Tr. 581] are provided sample jars or containers from the state investigative lab there in Oklahoma. Those sample jars were sealed with this white substance from inside the pan and also the remaining substance was placed in a sack and also later submitted to the lab.
Q Okay. Now I'm going to show you what's been marked as United States Exhibit 248. Do you recognize this object?
A Yes, I do.
Q What is that object?
A This is a sample bucket that we commonly seal evidence in to submit to the lab for analysis.
Q And you did that in this case?
A Yes, sir.
Q What did you put inside that bucket?
A The two sample jars and then also the remaining substance that was removed from the pan.
Q So you took the items that are found in the picture that's depicted as United States Exhibit 261, and you placed them in that bucket?
A Yes, the pan and the contents in the pan.
Q And this bucket was sent to the laboratory for analysis?
A Yes, sir.
Q And it was returned to your office?
A Yes, sir.
Q And has been kept in your custody and control ever since [Tr. 582] that day?
A Yes, sir.

Q Other than the fact it was tested by the laboratory, has it changed in any substantial way?
A No, sir.
MR. EGGERT: ... I move for admission of United States Exhibit 248. . . .
COURT: 248 is admitted.
Q Sir, I want you to open this bucket up and show us what's inside of it.
A There are two sample jars, there's a paper sack that we used at the time that the substance was put into, and then there's a plastic bag containing the remaining substance.
Q All right. Put it back in the jar, please. I'm going to show you what's been already admitted into evidence as United States Exhibit 258, ask you if this document corresponds to the items that are contained in that particular bucket?
A Yes, I does.
Q And is that the laboratory report for those items?
A Yes, it is.
Q You also submitted additional envelopes that contained headache powder to the laboratory for testing, too? [Tr. 583]
A Yes, sir.
Q Those came back negative?
A Correct.
Q But the testing as to the items in that bucket revealed what, sir?
A That the substance tested positive for methamphetamine.
Q In fact, the actual paper sack containing the tan powdery substance weighed exactly how much?
A The analysis report showed that it weighed approximately 150 grams.
Q That was that item that used to be in the plastic bag – that used to be in the paper sack but now it's in the plastic bag?
A Correct.
Q You also conducted a search of the interior the vehicle?
A Yes, sir.

Q And would you describe what you found in the search of the interior of the vehicle?
A Located in the vehicle I found unused or brand new box or insulin-type syringes. Also located a spotlight, a police scanner, a driver's license, a pair of thick, rubber-type gloves. I don't recall what else I removed. There were other items. . . . [Tr. 584] . . . .
Q Now, you're a – how do you know that's the same item that you seized that particular day, October 12th of 2003?
A It was also sealed in an evidence sack, later stored in the property room until it was obtained for the trial.
MR. EGGERT: At this time I move for admission of United States Exhibit 255. . . .
MR. APPELQUIST: Sir, you never made any determination as to which of the suspects matched up with that mask and coat?
THE WITNESS: No, sir. . . .
COURT: 255 is admitted. . . .
Q Have you ever seen these type of items used by individuals who engaged in the stealing of anhydrous ammonia?
A Yes, sir, I have.
Q And, again, kind of logical, but for the record, why would somebody have an item such as this?
A Conceal their identity.
Q Pretty obvious, isn't it?
A Yes. [Tr. 590]

EXCERPTS FROM TRIAL TESTIMONY OF MIKE QUINLAN:

Q . . . . This is a chart that shows the total amount of pseudoephedrine pills, 60-milligram dosage. Those invoices state that the Sims General Store ordered from August of 2001 to January of 2002.
A Yes, sir, it is.

Q And does this chart fairly and accurately depict the purchase of pseudoephedrine that are depicted in the invoices that are contained in United States Exhibit 211?
A Yes, based off those invoices.
Q Would this chart assist you in your testimony here today?
A Yes, sir, it would.
MR. EGGERT: At this time I'd move for admission of United States Exhibit 260A. . . .
COURT: 260A is admitted.
Q I'm going to show you, if you direct your attention to the screen. This is a chart that purports to ascertain the total number of pills sold by Handi-Rak to [Tr. 607] the Sims General Store during this period of time?
A Yes, sir.
Q I direct your attention to the first figure. It's kind of small there, so I'll bring it into focus. How many pills of 60 milligram pseudoephedrine do the invoices indicate the Sims General Store ordered in August of 2001? That would be the first figure.
A Yes, sir. 5,904 pills.
Q Then the next month?
A 4,896.
Q What would be the next month?
A 5,760.
Q That would be August, September, October. Now we're on to November. What's November's figure?
A 5,760.
Q What's the December figure?
A 6,912.
Q And then January, what's the figure for January?
A 12,672,
Q Prior to August of 2001, were there any purchases of 60-milligram pseudoephedrine made by the store?
A No, sir. . . . [Tr. 608]

MOTION FOR JUDGMENT OF ACQUITTAL:

MR. LEWRIGHT: I would move for judgment of acquittal at the close of government's evidence. . . .
COURT: . . . . Motion is denied. . . . .[Tr. 625]

EXCERPTS FROM TRIAL TESTIMONY OF DARLA NIX:

Q And what is Ms. Woodard's reputation in the community>
A Its very up-standing. [Tr. 633]

EXCERPTS FROM TRIAL TESTIMONY OF SHERRY WOODARD:

Q Now, Sherry, where do you reside?
A I currently reside in Pea Ridge, Arkansas on Lindsey Street.
Q Are you married or single?
A I have been married for 24 years to Jerry Woodard.
Q Okay. And how many children do you have?
A I have one son, and I have a son from a previous marriage.
Q And do you have any felony convictions?
A No sir.
Q Do you have any convictions for anything?
A No. I've never been stopped for speeding.
Q Now when did you move to Pea Ridge, Arkansas?
A When we sold the store, -- well, we sold the store March 3rd. I took my husband to Rochester, Minnesota to the Mayo Clinic. So we actually moved to Pea Ridge April 1st.
Q Is that of this year?
A Yes, sir.
Q And before that, where did you live?
A I lived at the junction of 90 and E Highway in McDonald County in a house on the property where the store was. [Tr. 642]

Q And before that, where did you reside?
A 7 or 8 miles east on KK Highway at Mountain, Missouri.
Q When did you move from Mountain, Missouri – when did you move from Mountain, Missouri – to the Sims Property?
A The week that we bought the store. So that would have been in November of 2000.
Q Now, before that, when you lived in Mountain . . . did you do for a living?
A I was a housewife.
Q And for how many years were you a housewife?
A '89 to I opened the store March 9, 2001.
Q Now, did you have any jobs in the meantime while you were a homemaker?
A No, sir.
Q You didn't – did you have a career of any kind –
A No, sir.
Q -- when you were a homemaker?
A Well, before, I mean in the early '80s, I was a Mary Kay sales director, but other than that, I was just a housewife.
Q And how long were you Mary Kay sales director?
A I was in Mary Kay from '86 to '89.
Q And what was involved in that?
A Cosmetics. As a sales director, I recruited young woman [Tr. 643] and taught them how to dress and use their make up and to – it was an image thing. And it was fun. It was a fun thing. And I had as many as 50 girls in my unit. I won two free cars. And it was when my mom died. My mom died – she died in 1990, and I kind of – with her being sick, it kind of slowed down. And when she did pass away, I didn't do it any more.
Q Now, do you know Lonnie Weston?
A Yes.
Q How do you know Lonnie Weston?
A We share the same mother.
Q And how old are you?
A Forty-four.
Q And how old is Lonnie?

A Fifty-seven, 58, 59. I'm not for sure.
Q Did you and Lonnie have a close relationship?
A Not really. I mean, we're close, but we're not – we don't – I mean, we're close because we're family, but we're not – we don't spend time together. We have our own lives.
Q Now, I'm going to show you State's Exhibit 202D. Now, this was highlighted in yellow. That's where you were residing; is that correct?
A Yes. Lived at the heart of the Mountain. It was property that previously had been owned by a great-great-grandpa.
Q Then you moved. Where was your house when you bought the [Tr. 644] Sims property?
A Our home had burnt in 1996, and we lived in a trailer at Mountain, and when we – we lived at Mountain. When we moved to Sims, we sold the trailer and moved.
Q So this trailer, was it still located where the yellow is or where the green is?
A Well, it was in – I lived at Mountain, and – well, up until I bought the store. And when we bought the store, we sold the trailer and we moved to the store.
Q Okay.
A At Simsberry on 90 and E.
Q Okay. So the store was there. Was your house on that same piece of property?
A Yes.
Q And where was your house located in relation to the store?
A The front door of the house and the front door of the store is about from here to that back wall.
Q Now, let me show you what's marked Government's Exhibit 201B. Is that Sims General Store?
A Yes, it is.
Q Now, your home, . . . is it directly behind it, is it to the –
A Where the ice machine is.
Q Okay. [Tr. 645] . . . .
A He needed a place to start a business. He wanted to put a salvage yard in. And the upper part of my property was away from the highway and away from – because they are an

eyesore. And he wanted to put in a salvage yard. He's great with working on vehicles. And that's how it came to be.
Q Where was this trailer located from your residence?
A Well, you had to – to get to this trailer, you had to enter off of KK Highway. And where I lived, I lived on – you had – you come off KK onto Mountain Road, then it's my house. To get to it, I would go out my driveway to Mountain Road, take Mountain Road to KK and then go about a half a mile to Lonnie's driveway into his property off of KK.
Q Why wouldn't you just walk over to Lonnie's property?
A Well, you had to cross a creek and field of ticks and whatever. And the hill was a killer. It was very, very steep, and it was long from the bottom to the top.
Q When did you first give – give Mr. Weston opportunity to use this trailer to start the salvage yard?
A When we bought the new trailer, sometime in '97.
Q Okay. And at any point did you realize – did Mr. Weston move into that trailer?
A Not – I never could find him up there. He never did live in it when I was living there. I'd find him working on cars, but at night and stuff, he was never there. . . . . [Tr. 648] . . . .
Q Now, there's been a lot of accusations against Lonnie, as you've heard in this trial. Now, before he moved into this trailer, did you have any occasion to ear of his reputation?
A Yes.
Q And what was that?
A I know that he had had – he had had some – we had talked about he had had some problems, from my mom. My mom knew what was going on. She would try to help him if he needed help. She helped all of her children. And he had had – he had been married before and had children and a divorce and had to start over, and so he had problems, and my mom helped him.
Q Had you ever been approached by anyone in law enforcement concerning your brother?
A Yes.
Q Who was that?

A Mr. Sutherland.
Q When did Mr. Sutherland first approach you about your brother?
A '98, '99, in that time frame.
Q Did Mr. Sutherland ask you to do anything with Lonnie or to give him any assistance with Lonnie?
A He asked me how I felt about drugs, and I told him how I felt; that I did not agree with them. I didn't want anything [Tr. 650] to do with them. And he told me he had concerns that Lonnie might be involved in drugs. And I asked him if he – if Lonnie had been arrested or if he had been caught, and he told me no, he had not. And I asked him if he found something out about Lonnie if he would tell me, because I wanted to know, and Mr. Sutherland told me that he would tell me.
Q What is you opinion of drugs?
A I think they destroy people's lives. I know they destroy people's lives.
Q Now, did you have a pretty good relationship with Mr. Sutherland at that time?
A Yes, sir.
Q And did you and Mr. Sutherland have any further discussions about drugs?
A Just that I – yes. He would – I would see – if I seen him parked – because I had given permission — he walked into my property when I first met him. And I told him I didn't care for him driving onto my property, parking his vehicle; he didn't have to park out on the road. And I told him that I wanted to know – I asked him if he would keep an eye on everything since he had suspicions, and he said that he would do that.
Q And is this when you bought Sims General Store?
A Well, that was before I bought Sims General Store?
Q And you gave Mr. Sutherland permission to come on your [Tr. 651] property at any point?
A At any point?
Q Did that include this trailer of Lonnie's?

A Yes, it did.
Q And did Jeff ever take you up on that offer, that you're aware of?
A I assume that he did. He walked up that way.
Q Did Jeff come back to you at any point with any concerns about what he was finding on your property?
A No, he did not.
Q So, again what year did you buy Sims General Store?
A November of 2000.
Q And did you – where you still working with Mr. Sutherland at that point?
A Yes, sir.
Q And did you and Mr. Sutherland at the time have any conversations about the drugs in the community?
A Yes, Well, when I moved – when I moved, I didn't go back down there. I didn't have time. And I asked Mr. Sutherland to continue to keep an eye on it.
Q How often did Mr. Sutherland keep an eye on this general store?
A On the store or on the property down –
Q Both.
A Both? Well, he – I would see him. Occasionally, he [Tr. 652] would come to the store and get a pop....I don't recall him ever eating there, but he came in and got something to drink on a regular basis when he would come through there.
Q Now, when you purchased this store, what made you purchase the store you went from homemaker to store owner?
A That was my husband's idea. He thought that it would he – hw is to retire in October of this year, and he thought it would be good idea if we – it'd be good for me. He thought it would be good for me to get out of the house and get me involved in something so that I wouldn't – because of depression. And it took over a month of going back and forth, because I didn't want to do it. I thought it was too much responsibility. I had never worked – I had never been a waitress or cooked or done anything like that. I had no idea what I was getting into.

Q Now, when you purchased the store, it was an operating, running concern at that point?
A It was an empty building.
Q And when was the last time that you were aware of that it was an operating general store?
A From Rick and Carol Brassfield.
Q Okay. And when you first opened it, what were your store [Tr. 653] hours?
A 6:00 a.m. to 10:00 p.m., seven days a week.
Q Who worked at this store?
A I hired employees to open, and they worked from six to two. And then I worked from two to four. That's when my son got out of school. He took over from four and worked from four to ten.
Q At any one time how many people worked for you?
A One person in the store at a time.
Q Now, this job, ... as store owner, what did it entail?
A A lot of work. We had a grill. We cooked breakfast, lunch. We had lunch specials. We cooked – we cooked from the time we opened until we closed. I didn't believe in shutting the grill down until the store was closed. If someone come in and wanted something to eat, we fixed it We fixed deli sandwiches, we cut all different kinds of meats and cheeses, made sandwiches. We sold fresh ground chuck, bacon, sausage.
Q Now, had you ever done anything like this before?
A No.
Q Had you ever sold items before like this?
A No, just cosmetics.
Q Now, this store, ... is it kind of in the middle of McDonald County? [Tr. 654]
A No, it's to one corner of McDonald County. I guess it would be the southwest corner of McDonald County....
Q Are there any communities of any size near the store?
A No.
Q What would be the nearest community of any size?

A Pea Ridge, Arkansas, is 12 miles to the south. They have a grocery store there and a bank and Pizza Hut. Pineville, Missouri, is to the east. I don't know how far. It's maybe 20 miles. I don't know. About 20 miles, maybe. Longview, Missouri, is north, and all that's there is a grocery store, a small country store. And then to the west would be Washburn. And there's a small country and grocery store there also. It's 17 miles there. It's a long ways from anywhere.

Q Now, this general store, what kind of items did you carry in it?

A Health and beauty aids, baby for – care for babies, personal care items, laundry care items, automotive items, camping items, grocery items, cookies, candies, pop, beer, wine, meat, cheese, chips, everything. We carried everything.

Q Now, when I'm looking at the government's exhibit, kind of has a – doesn't look like your Wal-Mart or Osco or Walgreens.

A It was kind of a ma-and-pops. It's been there about 50 years. My husband knew the owners, Jody and Lucy Sims, that [Tr. 655] 700-some dollars, and because of that, Wal-Mart will not – when they put my Social Security number in, they will not accept a check from at Sam's or Wal-Mart even though it's been that many years.

Q Now, what happened with that case when that woman stole your purse? What happened?

A I didn't follow up on it because it didn't affect me, financially, anyway. But the Bank of Pea Ridge where I banked followed up on it, and she was arrested and convicted and sentenced to prison.

Q Now, Handi-Rak, how did you come to meet Handi-Rak?

A Gentleman came in the store. I don't remember his name. He was about your age, height, build. He looked about like you do Had a suit on. Came in the store and asked me who was supplying me with candy, cookies, that type of thing. I told him that I had picked up everything from Wal-Mart, that I didn't have anybody.

Q And so then how did you come to do business with this salesman?
A Well, he told me how he could help my sales and increase my product line for my customers, and he talked to me. I had a large pegboard in the building that was probably 8-foot wide and 10-foot tall, and it was vacant. And we talked about putting Sather's candy on it, some more gloves and automotive things like fuses and tire plugs and little thing that you [Tr. 661] hang on pegboards. And I told him I couldn't afford to fill it up all at once. We discussed doing it a little bit at a time. He did convince me that day to buy $400 –some worth of sunglasses for a sunglass display, which I never did again because I think most of them got stolen, but – and it was – I don't have a – I told him that I didn't buy from people that I can't see the merchandise, so he agreed to bring it back himself personally, let me look at it and pay for it, and at that time if I was satisfied with the quality of it, and that's how the relationship with Handi-Rak began.
Q Now I'm going to show you what's marked Government's Exhibit 205A. Do you recognize that?
A Yes.
Q And what is that?
A It's a check for – it's – in the bottom box it say sunglasses, and it's to Handi-Rak, has in invoice number.
Q When you first started doing business with Handi-Rak, how – did you pay Handi-Rak by check or by cash or –
A I paid by check.
Q Now, had you had any discussions with this first gentleman that came in about how you were going to do business with him?
A Well, I wanted an understanding that if I bought anything and couldn't sell it, that he'd take it back. Because when [Tr. 662] I buy anything at Wal-Mart's, I can take it back if it doesn't sell. They got a policy. And so if I tried some items in the store and it didn't work out, I could take them back. And so he agreed that if I would let him supply the store with

merchandise, that we could go on that policy that I could return anything that didn't sell.
Q Now, you store, since you had all these vendors in there, how were the sales when you first started out?
A Better than what I thought they'd be.
Q How did you do your first year?
A Little over 200,000.
Q And how did it go – and that was from?
A That was from March 9th of 2001 until December 31st of 2001.
Q And for the next year?
A For 2002, just a little over 400,000.
Q So it became a good, going concern?
A Yes, it did.
Q Now, after you saw this salesman that came in, did you ever see him again?
A No. Well, after he made that first – he brought back the first delivery, then I never seen him again.
Q Who did you see after that?
A Mr. Laffoon. . . . [Tr. 663] . . . .
Q And do you recall about when this relationship with Handi-Rak began?
A June of 2001.
Q Now I'm going to show you what's marked Government's Exhibit 208A. Do you recognize that?
A The sunglasses, yes.
Q And that is – is that what you recall your first purchase?
A Yes.
Q From Handi-Rak?
A Yes.
Q And it came up to an amount of $493.59?
A Yes.
Q Now, were you buying any health or beauty goods from Handi-Rak?
A He wanted to put in a rack. He asked me if it was all right to put in a rack of – he called them energy and vitamins. And

I told him that I didn't know anything about them, that he would have to use his own discretion.
Q When did this occur?
A I think as soon as he started supplying me.
Q Right after this order for sunglasses?
A Yes. [Tr. 665] . . . .
Q Now, your vendors, any of them, did you ever check in anything they ever dropped off?
A No, not – no.
Q Now, these cold pill receipts for these cold tablets, were you aware at any time the change in product from 24s to 48s?
A Just the difference – not really. Mr. Laffoon priced them and put them on the shelf. It was just a difference in the price the he priced them.
Q Now, at any time during this working with Handi-Rak did you realize that there was any problems with your purchase of cold pills?
A No, I did not.
Q Did you still have a continuing relationship with Mr. Sutherland at that time?
A Yes, I did.
Q And during – was it a good working relationship?
A Yes.
Q In fact, how were you and Mr. Sutherland working together?
A ... I had an opportunity to go down on the [Tr. 668] Creek. I had ducks. I raised mallards. And I kept corn in the shed down there, and if I got the chance to get away, I'd go down and see them. And I went down once and there was a lock on my shed, and I called 911. Then there was another time, it was in early September of 2001 that I went down and I found a two burner square Coleman-type heater or – I guess it would be a heater, in my shed on a make-shift table and stuff, and I called 911 and talked to Mr. Sutherland and told him I suspected that someone was doing something illegal down there and would he please check it out.

Q And did Mr. Sutherland, to your knowledge, go check it out?
A Yes, to the best of my knowledge, he did.
Q What did Mr. Sutherland find?
A Three or four days later, he spoke of finding some individuals down there and chased them. I guess – I don't know, I guess made an arrest. Yes, he did make an arrest.
Q And do you know what kind of trouble he found there?
A Meth lab.
Q Did you continue to talk with Mr. Sutherland after that?
A Yes, I did.
Q Now, there's a date of January 17th, 2002?
A Yes.
Q Do you recall that? [Tr. 669]
A Yes, sir.
Q And what happened on that day?
A It was like any other day. My son had went to school. For some reason his vehicle wouldn't start and was the only vehicle. My husband was gone to work in his vehicle and my son and I shared a vehicle, and he drove back and forth to school. And he called me and needed me to come get him because it wouldn't run. So the lady that worked for me, I asked her if I could borrow her car. I asked her when I went to get him if I could stop at Wal-Mart, and she said I could. So I stopped at Wal-Mart, made some purchases, went and got him at school, brought him home. We unloaded the stuff. She took off because she had stayed longer than she needed to. My son took over. I went to the house. 10:30 that night, Mr. Sutherla[illegible] and Mr. Costner and I believe it was Mr. Grove knocked on my door at 10:30 at night, woke me up. And Mr. Sutherland told me that I was under arrest for my Wal-Mart purchases. And I was in my night clothes, and I waked him if I could change, and he told me I could. So I went back to the bedroom and told my husband that Mr. Sutherland was there and that he said I was under arrest for my Wal-Mart purchases. And I asked him if he would please get up and come get me. And I went – dressed and went back

in to Mr. Sutherland. We started outside. He said he needed to see my [Tr. 670] purchases, asked me if I would take him over to the store, so we went over to the store. My son was cleaning because he had been closed 30 minutes and he was cleaning. And Mr. Sutherland went –
Q Which son was that?
A Jared Woodard, mine and Jerry's son.
Q Then what happened?
A Mr. Sutherland headed up to the back room. Mr. Costner headed over towards the register. I don't know where Mr. Grove went. They all just went to going through things and looking at everything. They wasn't even like they – I mean, it wasn't what I expected. He was – said he wanted to look at my Wal-Mart purchases and that wasn't what he was doing. He went into the back room where there was – where the storage stuff was. There was an old metal desk back there, and he said he found – there was some crumbs of things on it and he said that it was marijuana and that he had – and he kept looking. And I asked him if he needed a search warrant, and he told me he didn't, and we argued about it and that he did get a search warrant. And my son and I sat in the booth till 2:30 that morning until they come back with a search warrant. And Mr. Sutherland and Mr. Grove went upstairs with a dog. He was up there about one minute and he come down with a little bag [Tr. 671] about 1-inch square with some pink stuff in it. He asked if it was mine or my son Jared's and we both told him no. He asked us a number of times, at least four times if it was ours, and we told him no. About this time Mr. Costner asked me to come over by the register because he said he was concerned about money transactions, didn't want to say any money was missing. And Mr. Sutherland took my son outside. And I was standing there with Mr. Costner, and Mr. Sutherland came back in and said that my son had admitted that it was his; and I could not believe that. I didn't believe it. And my son came in and he wouldn't look at me. He looked at the floor. Excuse me. Anyway, he told Mr. Sutherland it was his. And I suspected

to be took on to jail also because Mr. Sutherland told me I was under arrest a number of times, but at this point Mr. Sutherland said he was only going to take my son to jail and that I was no longer under arrest.
Q How did your relationship with Jeff go after that?
A I felt like the way he wrote up his report was – I did not feel like was accurate and that he had been honest, and so I did not trust him any longer.
Q And did you let Jeff in your store any longer?
A Yes, he still continued to come in my store. I still cooperated with him. I just didn't – I just – I still cooperated with him. And he came in my store – that was on [Tr. 672] January, started on the 17th, ended on the 18th, by the time the night was over. He came back in March, I think it was the 14th, with another warrant. He Come at 12:30 in the afternoon, right at lunch hour when I was real busy. A big round roll of yellow tape, said he was going to wrap the place up. He caused all my customers to leave and hurt business. He said he had a warrant for – to look to my receipts. And I cooperated with him. I thought I'm – I'm open. I told him what, you know, helped him, as helpful as I could be to show him where everything was. And he was there a few hours going through things.
Q Now, I'm going to show you some exhibits now. This is Defendant's Exhibit 31. I'll Hand it to you. Do you recognize that?
A Yes. It's a Wal-Mart receipt that Mr. Sutherland obtained , he took with him that day.
Q What's the date on that?
A January 10th , 2002.
Q And, now, what's the time on that receipt, if you can tell?
A It says 11.21.13. Does that mean – I don't know if that means 11:21 and 13 seconds.
Q Now, what are the items on that receipt?
A There's 528 items on this receipt for this purchase. [Tr. 673]

Q And what did you – those items, what did you purchase them for?
A They're for the store. . . .
Q Now I'm going to show you what's marked Defendant's Exhibit A38. Do you recognize that?
A It's a Wal-Mart receipt for 91 items on January 29th of 2001.
Q Now, what were those items purchased for?
A The store for resale.
Q I'm going to show you what's marked Defendant's Exhibit A36. Could you tell us what that is?
A It's a Wal-Mart receipt dated 3/5 of '02 for 52 items bought for resale.
Q And what time did you purchase those items?
A I don't know how you tell time. It says 1438. I don't know what time of day that is.
Q Now I'm going to show you what's marked Defendant's Exhibit A34. Do you recognize this? [Tr. 674]
A Yes. It's a Wal-Mart receipt dated 3/9 of '02.
Q What is that for?
A Items for resale.
Q Now, for Sims General Store?
A Yes.
Q I'm going to show you what's marked Defendant's Exhibit A33. Do you recognize that?
A It's more items for resale.
Q What's the date on that?
A 2/1 of '02.
Q And is that for items to resell in Sims General Store?
A Yes.
Q Show you what's marked Exhibit A35. Do you recognize that?
A Yes.
Q What is that?
A It's for – items for resale dated 11/15//01.
Q I'm also going to show you what's marked Exhibit A37. Do you recognize that?

A Yes.
Q And what is that?
A It's for more product, dated 1/17. Well, 1/17. That would be the receipt. That's the day of the warrant. That's the items I bought that day.
Q Now, this receipt of 1/17 . . . [Tr. 675] You believe the basis of the first warrant?
A Yes, that was the basis of why he came and got me out of bed. . . . .
Q When the first search warrant happened, what – on 1/17, what was brought to your attention?
A On the Wal-Mart receipt?
Q Yes.
A He wanted to know about the Coleman Fuel.
Q How much Coleman fuel did you purchase, if you can recall?
A I don't remember. You'd have to show me the receipt again. Ten, gallons.
Q Those were all for use? [Tr. 676] . . . .
Q And how long did she work for you?
A She started in November; November, December, January, February, March, three or four months. Probably closer to three months.
Q Now, the check to Rebecca, how long did – was she an employee of yours also?
A Off and on.
Q How long did she work for you?
A Well, she worked for me depending on when I needed help. Becky had worked for State Line Steak Out on Highway 71 for around six years. She was an excellent waitress, excellent in mixing dressings and just general cooking, and she was born and raised about a mile – a quarter of a mile from the store and she knew everyone. And she lived close, so if I needed help, she was convenient to call.
Q Now, when Michelle worked for you – what time period did Michelle start working for you?
A She started in November.

Q Okay. To?
A December, January, February, -- I'm going to say till March.
Q Was Michelle a good employee?
A She seemed to be. She was when I was there. She cooked. She was pleasant, main thing was taking care of customers, being pleasant, finding out – when you walked in our store, [Tr. 679] . . . .
A For my employees.
Q And this is all information that you had direct knowledge of?
A Yes.
MR. FOULKE: ... I would ask that A39 be admitted. . . .
COURT: Defendant's Exhibit 39 is admitted.
Q Now, there's some names on this list, there's a Lonnie Weston?
A Yes.
Q And did Lonnie owe you money?
A Yes.
Q And can you recall how much Lonnie owed you?
A Hundred.
Q Do you need to –
A A hundred and some dollars.
Q Did you ever get paid this money?
A No.
Q Also Lance Hackett?
A Yes.
Q Can you recall from that list how much money Lance Hackett owed you?
A Two hundred and some. [Tr. 682]
Q Had he ever paid you for that?
A No. I'd have to look to be exact.
Q Becky Shockley, she's on this list?
A Yes.
Q How much did she owe you?
A It's on the front page. Those were all taped together. Well, it wasn't taped. They have cut them in two. Well, yeah, I

guess they was taped. But they were on the wall behind the register so that – because we had – unfortunately, when we had started, my son had started charging when we opened the store, and it got out of hand.
Q Now, there's Lance Hackett?
A Yes, $196.67.
Q This is a little bit of an unusual filing system of names. How are they –
A They're alphabetized by first names, not by the last name. I don't know why my daughter-in-law did that.
Q Now, did Ms. Carroll ever owe you any money?
A Yes.
Q And were you ever able to collect it?
A No.
Q And why not?
A She up and took off with Harold Talber.
Q What do you mean, up and took off?
A Harold came back here to visit, and he's a chocolate milk [Tr. 683] drinker. He came into the store quite often to get milk, and over a course of a period of time, they became friends, and she just up and didn't come to work one morning. Actually, she come to work and left. She left in the middle of a work shift.
Q Now, all these items that were coming into your store from the vendors, you never checked in any of the vendors?
A No, sir.
Q Were you very good at keeping track of what was coming in the store?
A No, sir. I trusted my vendors.
Q Now, you've heard some testimony here from some witnesses. Now, have you ever provided any cold tablets for Rebecca Singleton to manufacture methamphetamine?
A No.
Q Have you ever provided any cold tablets to Lonnie Weston to manufacture methamphetamine?
A No.

Q Have you ever provided any cold tablets to Lonnie Weston to manufacture methamphetamine?
A No.
Q Have you ever provided to anyone any cold tablets to manufacture methamphetamine?
A No, I haven't
Q Have you ever aided anyone in manufacturing methamphetamine?
A No, sir, I have not. . . . [Tr. 684] . . . .
Q Ms. Woodard, you owned the Sims General Store?
A Yes, Sir.
Q You're the aunt of Jody Weston?
A Yes.
Q You employed at your store Rebecca Shockley, also known as Becky Singleton and Becky Littlefield?
A Yes. . . . . [Tr. 685] . . . .
Q . . . . It's obvious from your testimony you take a great deal of pride in what you did at that store.
A Yes.
Q Ma'am you understand, you're not on trial here for selling Little Debbies?
A Correct.
Q And you're not on trial here for selling tobacco?
A That's correct.
Q Or knickknacks behind the counter?
A Correct.
Q When you initially purchased the Sims General Store, you knew who Billy Brassfield was, didn't you?
A Yes.
Q And it's interesting to note that you purchased the store two weeks after the search warrant that was executed on Mr. Brassfield's trailer. Do you know that Mr. Brassfield had had a state search warrant executed at his trailer for methamphetamine two weeks before he sold the store to you?
A I read something in the paper about it.

Q Were you aware that Mr. Brassfield was such good friends with your brother, Lonnie Weston, as the evidence seems to have indicated in this trial?
A Rick was born and raised in that area. I know Rick's parents. Yeah, I [Tr. 692] mean, I assume, yeah, because –
Q Your testimony is that it's your husband that gave you the idea to purchase the store?
A Yes.
Q Rick Brassfield didn't suggest it to you?
A No, sir.
Q But you knew that there was a store available that Rick Brassfield owned; isn't that correct?
A The store's always been there, yes, sir.
Q Well, I understand that. But you knew it was available for sale?
A Yes. It had the real estate sign in front of it.
Q Obviously you approached either Mr. Brassfield or the real estate agent and asked to purchase it at some time: isn't that correct?
A Neither Mr. Brassfield didn't approach me or the real estate didn't approach me.
Q I'm asking did you approach –
A Oh, yes. My husband approached them first.
Q And you purchased the store?
A Yes. . . . . [Tr. 693] . . . .
Q I see. Well, you've heard testimony this week about what Ms. Shockley was doing during the course of this time. You weren't aware of all this activity she was involved in?
A No, sir, I was not.
Q These invoices that the Handi-Rak employee identified and were admitted into evidence show that the employee came every week to your store, correct?
A When he first came in, he told me he would come in, he told me he would come on Wednesday weekly, but I don't believe that he did come on a regular basis, no.

Q Well, to save us the trouble of going through these invoices piece by piece, would you agree with me that he came most every week?
A Well, for the sake of argument, yes, I'll agree with you because I wasn't there usually when he came in the evenings.
Q I don't want to belabor the point, but I guess I'm going to have to go through this just a little bit.
A He was supposed to come every Wednesday, if that's what you mean.
Q Yes. In fact, he came every Wednesday, didn't he.
A He was supposed to, yes. . . . [Tr. 702] . . . .
Q That's interesting to note, but I'm not asking how much you purchased for yourself. I'm asking how much you sold to people that came into your store. You're saying you sold above the state limit because you were not aware of it?
A No, sir, I didn't – I wasn't – I didn't sell it, no, sir. It was the store, the Sims General Store sold the pseudoephedrine. It was ordered and it was sold, yes, sir.
Q Who owns the store?
A I do.
Q Then you sold it, didn't you?
A The store sold it, yes, sir.
Q You're making a fine distinction now between yourself and the store?
A No. I still don't understand. I agree, yes, I ordered pseudoephedrine from Handi-Rak, as I ordered other products, and it was put on the shelf for retail. I don't dispute that.
Q Okay, Finally, going back to the list, there's lots of names on here that I recognize. Cody Guinn, you had a black mark against him apparently because he owed you some money?
A He's not to charge, no.
Q He's not to charge. Just like Becky Shockley wasn't to charge?
A Yes, sir. [Tr. 712] . . . .
A You'll have to ask me again. I'm sorry.
Q You didn't trust her enough to let her charge at your store?

A Didn't have anything to do with trust.
Q Okay.
A I had to put a stop to all charging.
Q Thank you. Of course, we have Lonnie here. We really don't know what is on the other side of this page because it's ripped off?
A It's there.
Q It's there?
A Yes, sir.
Q Where's it at? I guess I – oh, here it is. I apologize. You're correct. He also owed you some money. Above him was lance Hackett. Apparently Lance came into the store from time to time as well?
A Yes, sir.
Q And Kevin Davis?
A Yes, Sir.
Q You have him on your list. . . . [Tr. 714]

MOTION FOR JUDGMENT OF ACQUITTAL:

COURT: I assume you would like to renew your motions with respect to judgment of acquittal at the close of all the evidence? . . .
MR. LEWRIGHT: I have a written one . . . if you want it.
COURT: Well, again the standard here is pretty difficult for a defendant to meet. They have to conclude that there is not evidence in this record which would justify a verdict of guilty. It's depends on who the jury believes. I think that there's evidence – there is testimony in the case [Tr. 719-20]

EXCERPTS FROM CLOSING ARGUMENT BY THE GOVERNMENT:

That brings us now to Ms. Woodard. Now, Ms. Woodard is the half sister of Lonnie Weston. And I'm not saying the

government doesn't have any evidence to show that she ever distributed a lick of methamphetamine. For all we know, she never used methamphetamine. But that is not the criteria hare to determine her guilt.

The criteria here to determine her guilt is whether she knew there was a conspiracy and whether she joined that conspiracy. Knowledge. Well, she says, "I didn't know Lonnie was involved in methamphetamine activity. My, gosh, it was shocking to me."

Ok, taking that statement on face value, she knew at least by 1998 that Mr. Weston was involved in methamphetamine. Why? Because she testified to it; that Jeff Sutherland came to her and talked to her about it. So she knew.

Now, lets be honest, using our reason and common sense. This lady is a ground zero of this activity. She lives across the ravine from this methamphetamine laboratory. And you heard the testimony about how much of an incredible stench these things put out with anhydrous ammonia in the air.

[Tr. 20-21]

EXCERPTS FROM PRESENTENCE INVESTIGATION REPORT:

16. The Sims Store was purchased from Rick Brassfield in 2000. Sherry Woodard, the new owner and half sister of Lonnie Weston . . . .

Juvenile Adjudications: 38. None

Adult Criminal Convictions: 39. None

40. Criminal History Points: 0

41. Sherry Irene Woodard was born September 14, 1959, in Rogers, Arkansas. . . . The defendant resided in Benton County, Arkansas, until 1072, then the McNelly family moved

to McDonald County, Missouri, to be closer to a farm they were operating. . . . .

42. The defendant resided with her parents until age 18 when she married and established her own residence with her husband in McDonald County, Missouri. She relocated to Lowell, Arkansas, in 1982, then moved to Rogers, Arkansas, in 1989. In 1991, she returned to McDonald County, Missouri, where she resided until moving to Pea Ridge, Arkansas, in April of 2004, where she lived with her husband.

43. Archie McNelly, the defendant's father, age 82, resides in rural McDonald County, Missouri, and is engaged in farming. . . .

44. . . . [Woodard] has a number of half siblings who are listed as follows: . . . codefendant Lonnie Weston . . . .

NOTICE OF UNRESOLVED OBJECTIONS TO PRESENTENCE REPORT:

1. This Court should calculate the Base Offense Level solely upon the amount of methamphetamine manufactured after Woodard's purchase and operation of the Sim's Store.

The Presentence Report ("PSR") calculates the base offense level as a level 34. PSR para 28. This is an improper application of the Guidelines. The amount used to calculate this base offense level of 34 was the entire amount of methamphetamine that was the subject of the conspiracy, throughout the entire duration of the conspiracy. PSR para 18. According to the PSR, the distribution of methamphetamine by Weston, who was the leader of the conspiracy, began no later than 1997. PSR para 11. According to the PSR, the first possible involvement of Woodard in the conspiracy did not occur until October 31, 2000, roughly half-way through the "life" of the conspiracy, when she purchased the store. PSR

para 16. Moreover, (although not contained in the PSR), the evidence at the sentencing hearing will show that Woodard did not begin operating the store until March 9, 2001, and did not purchase (or sell) any pseudoepheorine until June 2001. As a result, Woodard's base offense level should be based only upon the amount of methamphetamine manufactured after she purchased and began to operate the Sims Store.

Application Note 2 to U.S.S.G. 1B1.3 makes plain that the scope of the conspiracy is not the same as the scope of the "jointly undertaken criminal activity" which forms the basis for the sentence. The last paragraph of Note 2 (prior to the illustrations) is even more explicit, stating:

> A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (*e.g.*, in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level.)

As a result, the proper application of the Guidelines would consider only the methamphetamine manufactured after June 2001. This results in a base offense level that can be no greater than 32.

The PSR properly does not sentence based upon any offense level on Count 5, although information concerning this Count is included in the PSR. Unlike the case with Count 1, the jury did not make any finding regarding the weight of pseudoephedrine that was at issue in Count 5. As a result, although the weight of the methamphetamine manufactured after June 2001 may be considered relevant conduct for sentencing under Count 1, reliance upon any weight of pseudoephedrine to base any more severe sentence under

Count 5 would be improper and reversible error because the weight of pseudoephedrine in the tablets at issue was never charged, proven nor found by the jury. Thus, to the extent that any use of Count 5 would result in an increase of the sentence without such findings by the jury, it would violate Woodard's Sixth Amendment rights as held in *United States v. Mooney*, 2004 WL 1636960 (8th Cir. Jul. 23, 2004), *reh'g en banc granted* (Aug. 6, 2004), and *Blakely v. Washington,* 124 S. Ct. 2531 (2004).

2. This Court should adjust the Base Offense level based upon Ms. Woodard's mitigating role in the offense.

The PSR fails to address adjustment under 3B1.2 (Mitigating Role). PSR para 30. The evidence at trial (and at the sentencing hearing) will demonstrate that the nature of Woodard's participation in the conspiracy and overt acts in furtherance of the conspiracy was minimal. Woodard's involvement in the conspiracy consisted of purchasing (wholesale) over-the-counter medications containing pseudoephedrine from Handi-Rack, stocking these products in the Sims Store, and selling these products through the Sims Store. Woodard's personal involvement in the running of the Sims Store consisted of supervising her two employees (who handled the day to day operations of the store), signing blank checks to be used for the payment of invoices from, among others, Handi-Rack, and personally reviewing and paying some of the invoices from wholesalers including, among others, Handi-Rack. There was never any allegation or proof that Woodard was involved in the actual manufacture or distribution of methamphetamine.

In addition, the facts demonstrate that the duration of Woodard's involvement was marginal. Woodard's involvement in the conspiracy did not begin until June 2001, when she purchased and began to operate the Sims Store (which prior to that time was vacant). She purchased the store from Brassfield, who was already involved in the conspiracy. By the time of Woodard's purchase of the Sims Store, the

conspiracy was already half-way through its "life." In essence, by purchasing the Sims Store, Woodard blundered into the existing Brassfield-Weston conspiracy. Thus, as a result of the minimal nature of Woodard's participation and the limited duration of her involvement, she was at most a very small cog in a large machine, and should receive an adjustment for her mitigating role under U.S.S.G. 3B1.2. Woodard was a minimal participant, and should receive the four level downward adjustment under 3B1.2(a). In the alternative, she should receive either the 3 level or 2 level reduction under 3B1.2.

In deciding whether to apply a downward adjustment under 3B1.2, the relevant conduct and relative culpability of each of the participants must be compared. *United States v. Hildebrand*, 152 F.3d 756, 767 (8th Cir. 1998) (affirming 2 level downward adjustment under 3B1.2). In this case as in Hildebrand, the defendant was not directly involved in the "primary" action of the conspiracy (*i.e.,* the manufacture of methamphetamine), and the adjustment is therefore appropriate.

3. The significance of these unresolved objections.

As a result of these unresolved objections, the total offense level before Chapter 4 enhancements (of which there were none), and the resulting total offense level should properly be 28 rather than 34, as contained in the PSR. PSR paras. 35-37. Since Woodard has no criminal history (Category I), the resulting guidelines range should be 97-121 months. Likewise, the fine under U.S.S.G. 5E1.2(c) should be $12,500 to $125,000. Based upon the facts contained in the PSR and to be introduced at sentencing, Woodard is eligible for the "safety valve" under 18 U.S.C. 3553(f) and U.S.S.G. 5C1.2, and the sentence should therefore be the sentence under the Guidelines rather than the statutory minimum.

EXCERPTS OF SENTENCING HEARING:

COURT: Let's focus, let me just state for the record that my understanding of Booker and Fanfan is that the sentencing guidelines are advisory. My view is that they present a [Tr. 2] presumptively reasonable sentencing range and that there should be some good reason for deviating from that range. But they are advisory. A different issue is presented by the statutory mandatory minimum sentence. I don't think that Booker and Fanfan affect the statutory minimum sentence. And absent a 5K1 motion filed by the United States, the only way Ms. Woodard can get relief from that statutory minimum is under the safety valve. The safety valve requires five different things of a defendant. And the one which seems to be most crucial here is whether Ms. Woodard has complied with 3553A I'm sorry. 3553F sub 5, that is not later than the time of the sentencing hearing the defendant has truthfully provided to the government all information and evidence that the defendant has concerning the offense or offenses that were part of the same course of conduct or the common scheme or plan.

MR. KESTER: . . . Specifically, with respect to the statutory minimum in the safety valve 3553F there are basically two arguments with respect to that. The first is that the statutory minimum does not apply because of Booker. I'll explain that in detail, the reasoning behind that, in just a [Tr. 3] minute. The second argument is that on the merits the statutory minimum doesn't apply because she does in fact satisfy the five requirements of the safety valve. And I think that we would be – in the hearing we would be discussing primarily or exclusively, I think the other four undisputed, the fifth element of that. Let me address first off the argument that the statutory minimum doesn't apply because of Booker. In Booker as the Court is well aware and forgive, I have to operate off my cheat sheet because it's so new. There were two questions. First question is, and I'll just – I'm

going to read it because I won't state it correctly – whether the 6th Amendment is violated by the imposition of an enhanced sentence under the sentencing guidelines based on the sentencing judge's determination of a fact, other than a prior conviction which is not at issue here, that was not found by the jury or admitted by the defendant. And then, Justice Stevens answered that question at the very end of his opinion for the court by reaffirming the holding in Apprendi. And this is quoting, any fact other than a prior conviction which is necessary to support a sentence exceeding the maximum authorized by the facts established a plea of guilty or jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt. [Tr. 4] The second question is then, basically, what is going to be done by that?

COURT: Stevens concurred in the result, did he not? Wasn't the opinion written by Breyer?

MR. KESTER: No. The opinion for the first – because there's two opinions for the court. The first opinion answering the first question was authored by Justice Stevens. And I'm operating from the slip opinion. I don't have the Westlaw version. The second opinion answering the second question that was posed, the question that was posed was, if the answer to the first question is yes, the following question is presented, whether in a case in which the guidelines would require the court to find a sentencing enhancing fact, the sentencing guidelines as a whole would be inapplicable as a matter of severability analysis such that the sentencing court must exercise its discretion to sentence the defendant within the maximum and minimum set by the statute for the offense of conviction. That was answered by Justice Breyer in his opinion answering the second question. This is at page 22 of the slip opinion. In our view it is more consistent with what Congress likely intended in enacting the sentencing reform act to preserve important elements of that system while severing and excising two provisions, 3553B1, which is the provision making the guidelines mandatory, and 3742E

which [Tr. 5] is the provision regarding appellate review of sentences. Those were the two provisions that were excised. The question of 3553F was not before the court in the second opinion that was authored by Justice Breyer. So for that reason that provision was not affected by the second opinion. It is therefore under the rule that was announced or reiterated in the first opinion and under Blakely, it is required that a jury find any sentence enhancing fact by beyond a reasonable doubt. So that if Ms. Woodard is not given the benefit of a safety valve, that can only happen if there is a jury finding that one of those five elements is not satisfied. That has not occurred in this case. Because that hasn't occurred, if she is not given the benefit of the safety valve and she is sentenced to the statutory minimum it's a violation of her 6th Amendment right that was recognized in Blakely and Booker. That's the argument with respect to the statutory minimum, doesn't apply. That's the Booker based argument that there would have to be a jury determination. With respect to the merits of whether she does in fact satisfy the safety valve, although we believe that should be determined by the jury in the event that the Court does address that, I think the evidence would support application of safety valve in this case. The evidence [Tr. 6] at trial, this is testimony from Sutherland. It was undisputed. I have the transcript and can make it available to the Court should you desire to see the specific page. He testified that Woodard called him to check on suspected meth labs on her property in 2000. And testified also that in March 2001 he was working with Woodard to get rid of meth labs in the area immediately adjacent to her. He testified that Woodard gave information to him regarding her suspicions, that gave rise to the chase of Krista Fletcher and Jody Weston on September 21, 2001. It gave rise to an arrest and seizure of a meth lab. He testified that there was a good working relationship and exchange of information with Woodard through December of 2001. And he found items, evidence, from her help and the information

that she provided. He testified to a specific discussion regarding the meth lab. Then she and Woodard asking Mr. Sutherland to keep people away from that lab. That occurred on December 6, 2001. On January 17, 2002, she consented to a late night search of her store and assisted in that search, went over and above the call of duty to help Officer Sutherland located information and evidence within the store. She approached Mr. Sutherland – and this is actually what gave rise to the beginning of the relationship in 1998 or 1999. And gave him permission to come to the store and asked him to do so. She [Tr. 7] made a proffer to Mr. Eggert for some two hours where she said everything that she knew regarding the case. She testified at trial consistently with what she said had said to Officer Sutherland beginning back in 1998 and 1999 continuing all way through trial. And we believe that evidence is going to be sufficient to establish the fifth element of the safety valve. . . . .

MR. EGGERT: Your Honor, as I understand the Booker opinion there are two decisions. Judge Stevens' decision says, and I paraphrase it, that the sentencing guidelines are a violation of the 6th Amendment because they are mandatory in their application. Therefore, if a defendant is to be sentenced to a sentence which is above the statutory enhancement or any sentence that is enhanced, that enhancement has to be proven to a jury beyond a reasonable doubt or admitted by the defendant either during the trial or during the plea of the case. Judge Breyer in his opinion, as has already been noted by the defense counsel, stated that there is no need to completely abrogate the guidelines. That they could be severed from the mandatory application and made advisory. So the issue here before the Court today is first of all whether or not in this particular case this novel argument [Tr. 8] that has been made by the defendant somehow makes the sentencing guidelines, not sentencing guidelines, the statutory minimums also advisory. What I understand the argument that is being made here consists of

is that the defense attorney is arguing that because the safety valve provision may some how allow for a reduction in a defendant's sentence if they qualify under each category of the safety valve, a jury must be given the opportunity to make a ruling as to each and every one of those particular elements before they could find the defendant guilty of the statutory minimum. Specifically, the defense counsel focuses on the fifth element which is the providing of a truthful statement which I think we all agree is what is at issue today. Your Honor, this flies directly in the face of Judge Breyer's logic in the opinion he wrote concerning the advisory nature of the guidelines. Judge Breyer suggested and I did not bring the opinion with me so I'm going on memory from my reading of the case. Is that it would be unnecessary and in fact foolhardy to require prosecutor's and also to allow juries to make decisions based on the enhancements because it would, first of all, make indictments unduly cumbersome. It would make jury decision-making unduly burdensome. And it would give incredible power to the prosecutor because the prosecutor [Tr. 9] could choose which enhancements to place in the indictment, which enhancements not to place in the indictment as well as which deferments, I suppose, that could be not placed in the indictment as well. Judge Breyer rejected this approach and said a better course of action is to simply say that apart from the statutory maximum we're going to make the guidelines advisory. The court can look at the guidelines as you've already suggested, Judge, and determine whether or not the guidelines are, in fact, reasonable in light of a particular defendant's characteristics. I believe, as the Court has already indicated, that Judge Breyer's strong preference as well as what was indicated by Judge Scalia's dissent to that opinion is that the guidelines are a forum or a per se standard for reasonableness. It does not mean they're reasonable in every case. And I believe in this particular case there is reason to think that they're not reasonable. Reason to think they're not reasonable is a mouthful. My point would

be simply this. If you take the defendant's logic that we are going to allow enhancements, not enhancements, but reductions to be pled to the jury through the form of instructions, that that is allowing the defendant to have their cake but taking away the prosecutor's ability to file similar requests to the jury to find enhancements. Judge [Tr. 10] Breyer says you can't find enhancements through jury verdicts so why would we allow defendants to file reductions through jury verdicts? That makes no sense. And, if fact, it is cumbersome and it places undue power now in the hands of defense counsel who can create instructions that will give their clients incredible benefit and there is very little the prosecutor can do about it. I don't believe that's the logic of Breyer's decision at all. In fact, that is a dangerous precedent to take. Let's look at what happened in this particular case. The defendant was charged in Count I of the indictment with participating in a conspiracy to manufacture in excess of 500 grams of methamphetamine. Was charged as you're supposed to charge it under the Apprendi decision. The jury was given an instruction specifically asking them to find proof beyond a reasonable doubt that the defendant guilty of participating in this conspiracy and found that the conspiracy involved in excess of 500 grams of Methamphetamine That's the end of the analysis under the Booker decision. Judge Stevens' majority opinion as well as what Judge Breyer suggests in his opinion seems to suggest that statutory minimums are still the law. That may be [Tr. 11] unfortunate for this defendant but that's the law. Whether or not she should be sentenced under the guidelines is a whole different matter entirely. But her sentence at the very least should be 120 months. And to suggest otherwise would fly not only in the face of the logic of Booker that Judge Breyer suggested in his opinion, but also fly directly in the face of congress's intent which was the important distinction that Judge Breyer made in his majority opinion. He was very concerned about what Congress attempted to do and he attempted to create an

opinion that preserved Congress's intent without violating the 6th amendment. So I reject completely, You Honor, this argument that somehow suggests that the jury should be given the opportunity to determine reductions based on the safety valve. That is not a logical argument. Now, secondly, Your Honor, the suggestion that was made that Ms. Woodard, assuming that you accept this logic which I don't believe you will but assuming you accept this logic, the other argument that was made was Ms. Woodard gave a truthful statement on several different occasions through not only her cooperation but also her trial testimony. The government can not disagree more strongly with this statement, given a truthful statement about anything in this particular case. First of all, Ms. Woodard has constantly [Tr. 12] denied her involvement in this activity of selling pseudoephedrine. I think the evidence would suggest that she was involved. The government believes she was knowingly involved. But at the very least she was willfully blind to what was going on in her store, allowing it to take place because she knew her brother needed the product to manufacture methamphetamine. Secondly, Ms. Woodard testified during trial. During her testimony she denied her involvement in the conspiracy to manufacture methamphetamine, vehemently. She denied providing pseudoephedrine to her brother to manufacture methamphetamine. She denied knowledge of methamphetamine activity taking place in the vicinity of her house. Of course, Lonnie Weston lived right down the road from her on her same property. And she also expressed that she did not know what was being purchased by her store in the form of pseudoephedrine. She made statements that store clerks were purchasing pseudoephedrine, that Charles Lafoon was supplying pseudoephedrine, that she was not actually ordering and she didn't sign the checks on several occasions for the pseudoephedrine that was supplied to her store. All of which were contradicted by the testimony of Mr. Lafoon. That in the government's opinion was not truthful. And in

fact, the jury found that it was not truthful. Because they convicted her in spite of her adamant denials of [Tr. 13] involvement. So my point, Your Honor, would be, even assuming this fanciful argument the defense makes is true, they cannot show any prejudice in this particular case because the jury, even after being given the opportunity to acquit the defendant based on her truthful statement, quote, unquote, chose to convict her because they did not believe what she had to say during her testimony. There could be no other way to look at it. . . . . I believe that the mandatory minimum in this case should apply, which is 10 years. That may seem harsh to this particular defendant who has no criminal history. I could argue for the reasons why I don't think it's harsh at a later time. As far as the issue of whether or not in this particular case the guideline range of 151 to 188 should apply, I will leave that to the Court to decide. I agree that there are circumstances of this particular case which could allow the Court to sentence below 151 months, that it would be reasonable for the Court to do so. I believe that the per se standard for reasonableness is still the guideline range. But considering this is her first offense, she has no felony history, no misdemeanor history to speak of, and she was a participate that was not a major player in the case, I think 120 months would probably be an appropriate sentence. [Tr. 14] . . . .

MR. KESTER: . . . It was my understanding that when we were, when I was up here talking, specifically, about the statutory minimum that the guidelines issues were not – that the Court was not taking them up at this particular time. That it was interested in the statutory minimum issue. And Mr. Eggert, again, has remarked by indicating that they were two distinct issues in this case, then he got into the guideline sentence. We have issue both with respect to Booker and in respect to just the simple normal application of the guidelines. If the guidelines are at issue, now, I can certainly go through and explain to the Court our position on

those various things. It was my understanding that the Court was of the view that the guidelines issues weren't an issue that the Court was interested in. Everything in the Court's view was satisfied that it could go below the statutory minimum. And the question that the Court was considering was No. 1, was – is it the Court or the jury that is going to do that? And No. 2, should it be done on the merits of the fifth requirement.

COURT: Well, let me tell you what my views [Tr. 15] are, Mr. Kester. First of all, I don't believe that the guideline range in this case, the 151 to 188 months, is a reasonable sentence for Ms. Woodard. I think that something below that range is a reasonable sentence for Ms. Woodard. And to the extent that I can do so under the law, it's my intention to go below that range. Booker allows me to do that. I can below the guideline range because the guidelines are advisory and they're discretionary. That takes me to 120 months. 120 months is the statutory minimum sentence and I can't get below that unless you're right about the factors needing to be proved to the jury beyond a reasonable doubt or the applicability of the safety valve. The applicability of the – first of all, I don't buy your argument that the elements of the mandatory minimum sentence have to be proved to a jury beyond a reasonable doubt. I just don't. But in any event, here, the jury believed that Ms. Woodard was involved in the conspiracy and they also bought into the amounts of the conspiracy necessary to justify the application of the mandatory minimum sentence. So perhaps there's no 6th Amendment argument whatsoever about the applicability of the mandatory minimum sentence. So perhaps there's no 6th Amendment argument whatsoever about the applicability of the mandatory minimum sentence, which takes us then to the safety valve. Does the safety valve apply in this case to give Ms. Woodard relief under the mandatory minimum sentence. I'll tell you that I'm at 120 months now. Which eliminates, [Tr. 16] I think, the need to talk about the other guideline

issues that you wanted to talk about. It is also eliminates the need to talk about whether or not it's appropriate for a 5k2 departure here because I can't depart under the mandatory minimum unless the safety valve applies or the government asks me to, based upon substantial assistance. So I think that we don't really need to talk about your guideline objections and I just need to decide whether the safety valve applies here or not because if it doesn't we're talking about a sentence of 120 months. If it does then we're talking about a sentence of 120 months or below in my view. Now, having said that I'll tell you that it's my view that Ms. Woodard has not complied with all the requirements of the safety valve. And I don't buy the argument that the jury has to determine beyond a reasonable doubt whether she's entitled to relief or not. I think that I can make that determination. And I think the problem area for Ms. Woodard is element five, whether she has given a true, a truthful proffer to the United States or to this Court. The jury did not believe Ms. Woodard's testimony. I'll have to say that I agree with the jury. I don't believe that Ms. Woodard was innocent in the conspiracy. I think that she knew the pseudoephedrine was being purchased. I think that she knew that Lonnie Weston was using that [Tr. 17] pseudoephedrine for the manufacture of methamphetamine. And I think she was being compensated for that by Mr. Weston. Now, because that's what I believe, her testimony at trial is inconsistent with the Court or with the government. And I cannot conclude that she's entitled to relief under the safety valve. Now, that leaves us at 120 months. There is nothing – I can go up from there but I can't go below it. So that's where we are now. And I know had witnesses that you wanted to put on that would have addressed some medical issues and perhaps persuaded to the Court to depart downward from the guidelines range. I'm going to do that anyway so you'll have to decide whether it's necessary for you to put on any evidence beyond what you've already talked about.

MR. KESTER: Your Honor, I do want to make clear the guideline issues do become important because 3553F applies in the event that the guidelines range is lower than the statutory minimum. And in that sense if the Court is of the view that the guidelines range is above the statutory minimum then all those guideline issues do become important.

COURT: Well, if I'm wrong about the applicability of the safety valve, it's going to come back for resentencing in any event, will it not?

MR. KESTER: Well, Your Honor, I want to make sure [Tr. 18] that's the one reason that it's being denied as opposed to because you are or the Court is of the view that the guideline range is above the statutory minimum. We have several arguments regarding why it is that the guideline range would in fact be lower than the statutory minimum. I want to make sure I understand which issue it is we're dealing with. Whether we're dealing with one, that being the applicability of Booker and that sort of thing to the determination under the safety valve or whether we're dealing with a second issue about what the guideline range is and whether it is lower than the statutory minimum.

COURT: I guess I'm saying is if I grant all your objections to the presentence report and the manner in which it has applied to the guidelines, If I grant all those abjections I still can't get below 120 months based upon my view of the law and the inapplicability of the safety valve here. Now, if I'm wrong about that, then I think that opens up all of the guideline issues and the guideline range may, after those issues are ruled, be below 120 months. But it seems to me that those are issues to be decided after the Court of Appeals has decided whether I'm right or wrong about the inapplicability of the safety valve.

MR. KESTER: Okay. I understand that. To be real candid, I don't want to get up to the Eighth Circuit on this

[Tr. 19] and find out from – during oral argument, well, Mr. Kester, the Court never determined that the safety valve would even apply because of the guideline range. The Court didn't determine it would have been lower. I want to make sure that's not an impediment.

COURT: Let's make it clear. If I could, I would go below the 120 months in this case. So if I'm wrong about the safety valve then the Eighth Circuit can send it back to me and I'll impose a sentence that is below 120 months. I mean, I can't make it any easier for you on appeal than that. . . . [Tr. 20] . . . . Ms. Woodard, it's hard for me or I think anyone else to find fault with the way you lived your life prior to the time you bought the store. And that's why this sentence that I'm about to pronounce is one which saddens me. I realize that these things don't happen in a vacuum. I understand the effect it has on you and the effect that it has on your family. And I wish it could be different. But I believe that the law requires me to improve the sentence that I am about to impose. It is the judgment of this Court that the [Tr. 24] defendant Sherry Woodard is hereby committed to the custody of the Bureau of Prisons to be imprisoned for 120 months on Counts I and V, those items to be served concurrently. Upon release from imprisonment Ms. Woodard will be on supervised release for a term of 5 years on each of Counts I – 5 years on Count I, 3 years on Count V for a total of 5 years. Those terms to run concurrently. I decline to order a fine in this case in light of Ms. Woodard's financial circumstances and the demands of her family. I am required to impose special assessments on each count of conviction of $100 for a total of $200. That sum is due and payable to the United States immediately. . . . [Tr. 25]